

# GSLTR

## Global Sports Law and Taxation Reports

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The Netherlands:

# Tax planning for incoming team sports players

by Dr. Dick Molenaar<sup>1</sup>

## Introduction

This article deals with the personal income tax treatment of incoming team sports players in The Netherlands, either in a Dutch team or with a foreign team performing activities in The Netherlands. It discusses the residence status; worldwide and limited tax liability in The Netherlands; and elimination of double taxation for foreign source income.

## Taxation of resident team sports players in The Netherlands

### Tax rates and personal allowances in The Netherlands

First, the taxing rules for resident sports players in The Netherlands will be explained. Resident team sports players can have the Dutch nationality, but can also be foreign sports players who have moved their residency to The Netherlands. For them the Dutch tax rates and personal allowances are as follows in 2013 (in euros):

<i>income</i>	<i>income tax</i> <sup>2</sup>	<i>general social security</i> <sup>3</sup>	<i>total tax</i>
0 - 19,645	5.85%	31.15%	37%
19,645 - 33,363	10.85%	31.15%	42%
33,363 - 55,991	42%		42%
55,991 -	52%		52%

### personal allowances<sup>4</sup>

- general	2,001
- for workers	1,723 (low income) - 550 (high income)

### Mainly employees

Team sports players normally are employees, working under the supervision of a coach and the team management and having to follow their orders. They receive a salary, from which the total tax (including general social security) in combination with the personal allowances in monthly brackets is taken off by means of a withholding tax<sup>5</sup>. When an employee in The Netherlands works the whole year for the same employer and does not have any extra income or special deductions, the income tax will be exactly the same as the withholding tax on the salary. This means that there is no additional income tax obligation and, after the taxable year, no income tax return needs to be completed and returned to the Dutch tax authorities<sup>6</sup>. But when an employee has a variable income during a year, e.g. because he has worked with various employers, had periods without income or with an unemployment

benefit, an income tax return may be profitable because the income tax obligation may be lower than the withholding tax and a tax refund can be obtained.

Employees in the Netherlands cannot deduct business expenses from their taxable income, but reimbursements for expenses from the employer are exempted from withholding (and income) tax.

### Sometimes self-employed

There may be sports teams in which the sports players are not employees but self-employed. If so, no withholding of tax by the sports team is required, but the self-employed sports players need to pay their own income tax, as mentioned above in the subparagraph "Tax rates and personal allowances in The Netherlands".<sup>7</sup> When in doubt whether the relation between team and sports player is employment or self-employed work, the Dutch tax authorities can assess the relationship in advance and provide a binding written statement<sup>8</sup>.

Self-employed team sports players are allowed to deduct their business expenses from their earnings. For self-employed persons who are running their own business, extra allowances can apply. Examples are the small business allowance of 14% from the profit<sup>9</sup> and the self-employed allowance<sup>10</sup> of € 7,280, for which the condition is that more than 1225 hours during the taxable year need to be spent on the self-employed work. But these extra allowances will not further be discussed in this article, because it rarely happens that resident team sports players are self-employed.

### International taxation of sports players

#### Residence

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<sup>2</sup> Dutch: *inkomstenbelasting*.

<sup>3</sup> Dutch: *premies volksverzekeringen*. The general social security comprises state old age, widow and orphans pension schemes and special sickness expenses schemes, which other states regularly pay from their general state budget. Officially, there is a division in the Netherlands between income tax and general social security, but the total is considered to be the tax rate. Besides this, employers in The Netherlands also have to pay social security contributions for unemployment, disability and health insurance (Dutch: *werknemersverzekeringen*), the same as employers in other states. These employers' contributions are not discussed in this article. There are more personal allowances, for single parents and disabled persons, but these are not mentioned in this article.

<sup>4</sup> There are more personal allowances, for single parents and disabled persons, but these are not mentioned in this article.

<sup>5</sup> Dutch: *loonbelasting*.

<sup>6</sup> Dutch: *Belastingdienst*.

<sup>7</sup> But self-employed are not covered by the employers social security (*werknemersverzekeringen*).

<sup>8</sup> Dutch: *verklaring arbeidsrelatie (VAR)*.

<sup>9</sup> Dutch: *mkb-winstvrijstelling*.

<sup>10</sup> Dutch: *zelfstandigenaftrek*.

In cross-border situations, first to be studied is the residence status of the team sports player. When a sports player goes individually to a team in another country, it is very likely that he will move his residency to that other country, because he needs to go to the training every day, play home matches with his team and travel from the home club to away matches (and back). Exceptions will exist for teams in cities and towns just across the border, at reasonable distance from the place of residence of the sports player, such as Belgian football players with football clubs in the south of The Netherlands; and for short term contracts, such as for the four week contracts for foreign hockey players in the Hockey India League (HIL) in January/February 2013. But for longer contracts a team sports player coming from another country will normally move his residency to the new country and will not be considered as a non-resident for tax purposes.

Sports players travelling with their team to other countries will be non-residents in those other countries and be taxed as such.

Art. 4 of the OECD Model provides a special provision to determine the residence status of a person. The article uses a tie-breaker with criteria as “centre of vital interest”, “permanent home” and “nationality” in that order as deciding factors. When no decision can be made, the competent authorities will settle the question by mutual agreement. Most bilateral tax treaties have taken over this residence provision.

### ***National taxing rules for non-resident sports players and teams***

Almost every country has a withholding tax on payments to non-resident sports players in teams in their country, either as employees or as self-employed, and to foreign teams. This withholding tax can be a simple scheme with one fixed rate or can be a progressive scheme with various rates. Nowadays, most countries allow the deduction of expenses at the date of the event and normal tax returns after the taxable year. In Europe, this came into practice after the 2003 Gerritse<sup>11</sup> and 2006 Scorpio<sup>12</sup> decisions of the European Court of Justice (ECJ).

#### ***Art. 17 in tax treaties, both for employees and self-employed***

In most tax treaties, this taxing right for the country of work has been acknowledged. Countries normally follow the recommendation of the OECD and take over art. 17 for sportsmen (and artists) when concluding their bilateral tax treaties. With art. 17, the taxing right for the performance country becomes very broad and catches both payments to the non-resident sports players directly<sup>13</sup> and payments to others, such as the non-resident teams<sup>14</sup>. This means that the total team may be taxed at once, without the obligation to divide the fee over the individual members. In practice, most countries use this broad taxation for non-resident teams.

The text of art. 17 makes clear that it does not make a distinction between sports players as employees or self-employed, because the article sets aside the normal allocation rules for employees (art. 15 of the OECD Model) and self-employed (art. 7 of the OECD<sup>15</sup>).

Many countries have also concluded an exception to art. 17 in their tax treaties for performances in the other country, which are wholly or mainly supported from public funds.<sup>16</sup> Unfortunately, sports teams most often do not qualify for this condition and, therefore, cannot return to the normal taxing rules of art. 7 or art. 15.

#### ***Elimination of double taxation: exemption versus credits***

Opposite of the taxing right for the country of work, the country of residence will include the foreign source income in the

worldwide income, which means that it will be taxed again in the residence country. To eliminate double taxation, tax treaties have inserted a provision comparable to art. 23 of the OECD Model Treaty, granting the sports players a tax exemption for the foreign income or tax credit for the foreign tax. Since 1992, the OECD recommends the ordinary credit method for income falling under art. 17,<sup>17</sup> but many countries from the European continent, which are generally using the exemption method for active income, still have this exemption method for art. 17 income in older, pre-1992 tax treaties.

### ***Taxation of European football***

UEFA has managed to exclude taxation under art. 17 in regard to its competitions. In the elimination phase of both the Champions League and Europa League, every club keeps its own box office earnings from home matches and does not pay anything to the visiting foreign clubs. Therefore, there is no taxable foreign performance income under art. 17 of the OECD Model for the participating football clubs. Furthermore, the revenue collected by UEFA<sup>18</sup> from TV rights and sponsoring, a portion of which is paid to the participating clubs based on their results and size of their home state, normally falls under art. 12 of the OECD Model and allocates the taxing right to the residence country. As a result, there is no risk of double taxation in respect of income from home and away matches.

This is different for the Champions League (CL) and Europa League (EL) finals, which are played in one match in a country chosen by UEFA. The box office earnings from these finals are shared by the two clubs and UEFA, which means that the country of the final can levy a withholding tax if the finalists are non-resident. But for the CL finals of 2011 (Wembley, London, UK), 2012 (Allianz Arena, Munich, Germany) and 2013 (again Wembley stadium), due to pressure from UEFA, the United Kingdom and Germany have given up their withholding tax, despite that normally they levy 20% (UK) and 15.875% (Germany) withholding tax. For the EL finals of 2011 (Dublin, Ireland) and 2012 (Bucharest, Rumania), it was easier, because Ireland does not levy any tax from non-resident sportsmen; and Rumania informally granted a tax exemption to UEFA to get the 2012 EL final to Bucharest.

<sup>11</sup> *Arnoud Gerritse vs. Finanzamt Neukölln-Nord*, ECJ 12 June 2003, C-234/01.

<sup>12</sup> *FKP Scorpio Konzertproduktionen GmbH vs. Finanzamt Hamburg-Eimsbüttel*, ECJ 3 October 2006, C-290/04.

<sup>13</sup> Art. 17(1), OECD Model.

<sup>14</sup> Art. 17(2), OECD Model.

<sup>15</sup> In older tax treaties, art. 14 is still mentioned for self-employed work, but the OECD has removed this article in 2000 from its Model Tax Treaty and included self-employed work in art. 7 (Business Profits).

<sup>16</sup> As research shows, this art. 17(3) has been included in two-thirds of the bilateral tax treaties, with some countries using the exception in almost every bilateral tax treaty. Sometimes, other conditions are set for the exception, such as non-profit status and cultural exchange or agreement. See Dick Molenaar and Harald Grams, “Article 17(3) for Artistes and Sportsmen: Much More than an Exception”, in: *40 Intertax 4* (2012), p. 270.

<sup>17</sup> See § 12 of the Commentary on Article 17, OECD Model.

<sup>18</sup> UEFA is based in Lausanne, Switzerland.



Also for EURO 2012, UEFA has convinced Poland and Ukraine not to levy any tax from the participating national football teams in order to avoid double taxation and administrative expenses.<sup>19</sup>

## Foreign sports players in Dutch teams

### Residence

As mentioned in previous paragraphs, in most cases a foreign sports player, who has concluded a contract with a professional sports team in the Netherlands, will become a resident of the Netherlands. For example, in football, a player has to be present at daily training sessions, plays every other week a home match (or more often with cup and international matches) and has to travel with his team from the home base to away matches (and return), and his contract will most often last for one season or more. Normally, his “centre of vital interest” will then be his home in the Netherlands.<sup>20</sup> If so, the foreign sports player will become taxable under the normal rules for residents, as described above in the paragraph “Taxation of resident team sports players in The Netherlands”.

This may be different for, for example, cyclists with a Dutch cycling team who have their races in various places in Europe and elsewhere and just rarely in the Netherlands. They also do not have a fixed place for training sessions and very often travel individually to cycling races. This means that they can keep their residency in another country than where the Dutch cycling team is based or perhaps even move to a country with a preferential tax regime.

### Mainly employees, normal rules

Most team players will become an employee of the Dutch team, because they have to work under the supervision of a coach and the team management and have to follow their orders. If so, the normal Dutch tax rates and personal allowances apply to the foreign players.

Residents will be taxed on their worldwide income.<sup>21</sup> Non-resident employees, who are working only outside of The Netherlands, will be exempted from Dutch taxation.<sup>22</sup> Other non-resident employees will be taxable in the Netherlands on their worldwide income, but exempted for foreign income which has been taxed effectively in another country in accordance with a bilateral tax treaty concluded by the Netherlands with that country.<sup>23</sup> This foreign income, which has already been taxed, will not be a part of the Dutch taxable income,<sup>24</sup> which means that a full exemption and not an exemption with progression is granted.

Both resident and non-resident sports players, working as employees, can file a Dutch income tax return after the taxable year and obtain a tax refund, if applicable. This will be the case when the contract has not lasted the full year or when different contracts have existed with varying salaries and/or periods without income or with an unemployment benefit.

But an income tax return can be very profitable, if the sports player, working as an employee, remains a non-resident and has concluded one or more contracts for less than three months each (= short term)<sup>25</sup>. Then, this sports player is exempt from the general social security<sup>26</sup> and the tax rate in the first two tax brackets is only 5.85% and 10.85%, as specified above in the subparagraph “Tax rates and personal allowances in The Netherlands”. The refund will then be 31.15%, up to € 33,363 taxable income.

### Sometimes 30% rule

Foreign employees sometimes can make use of a special 30% deduction on their salary, if they have specific expertise from which workers in the Netherlands can learn. The conditions for this specific expertise are that :

- 1 the gross salary must be over € 50,000 per year (incl. 30% deduction);
- 2 the residence place of the foreign em-

ployee at the moment of the conclusion of the contract was more than 150 kilometres from the Dutch border; and

- 3 the specific expertise must be scarcely available in the Netherlands.

When the foreign sports player meets these conditions, he will only be taxed on 70% of his salary.

The third condition of scarcity has been specified for foreign football players in an agreement between the Dutch football association (KNVB) and the Dutch tax authorities (Belastingdienst). To meet the condition, the foreign football player:

- 1 must have played over the last two years at least 50% of the official international matches for his country, which belongs to the Top 30 of the FIFA-list;
- 2 must have been selected for 2/3 of these international matches;
- 3 must have played at least in 2/3 of the matches in the top league of the competition in his country; and
- 4 must have played at least 8 matches in the Champions League or Europa League.

Players of 18 or 19 years have to meet 50% of these criteria. These extra conditions lead to the result that only very rarely foreign football players qualify for the 30% rule.

For other foreign sports players, it seems that no extra condition is set for the “scarcity”, but that it is enough to have a gross salary of over € 50,000 per year and to come from more than 150 km from the Dutch border. If granted, the 30% rule can be applied for 8 years.

### Sometimes self-employed (residents)

On rare occasions, it may be that the foreign sports player works self-employed for a Dutch team. If so, and he becomes a resident of The Netherlands, he will be taxable for his worldwide income under the normal Dutch tax rules for self-employed as specified above in the subparagraph “Sometimes self-employed”.

### Sometimes self-employed (non-residents)

#### Contract longer than three months

When the self-employed sports player remains a non-resident, he will not be tax-

<sup>19</sup> See Karolina Tetlak and Dick Molenaar, “Tax Exemptions for EURO 2012 in Poland and Ukraine”, in: *52 European Taxation* 6 (2012), p. 325, and Karolina Tetlak, “The tax regime for EURO 2012”, in: *GSLTR 2012/1*, p. 8.

<sup>20</sup> See e.g. the case about residency in Belgium or the Netherlands of the PSV coach Guus Hiddink, *Rechtbank Den Bosch* 27 February 2007, NTFR 2007/636.

<sup>21</sup> Art. 2 Wage Tax Act (Dutch: *Wet op de loonbelasting*).

<sup>22</sup> Art. 2(3) Wage Tax Act.

<sup>23</sup> Art. 2(4) Wage Tax Act.

<sup>24</sup> Art. 7.2 Income Tax Act (Dutch: *Wet op de inkomstenbelasting*).

<sup>25</sup> Short term is defined as three months or less, which has been confirmed by *Gerechtshof Amsterdam* 24 May 1993, *BNB* 1994/159.

<sup>26</sup> Art. 19 *Besluit uitbreiding en beperking kring verzekerden der volksverzekeringen*.

able in The Netherlands when his contract has a longer term than three months.<sup>27</sup> It is unclear why this restriction has been included many years ago in both the Dutch withholding tax and income tax rules, but the result is that this self-employed non-resident sports player will only be taxable in his residence country.

#### *Short term contract*

With a short-term contract (for less than three months), the self-employed non-resident team sports player becomes taxable in the Netherlands.<sup>28</sup> The tax rate is then fixed at 20% from the gross performance fee,<sup>29</sup> but expenses can be deducted, either after written approval from the Dutch tax authorities (*Belastingdienst*)<sup>30</sup> or at the fixed amount of € 163 per performance<sup>31</sup>.

After the year, the self-employed non-resident sports player with short-term contract(s) can file a normal income return to settle the withholding tax rate against the income tax rates. This is profitable in most cases, because he is exempted for the general social security,<sup>32</sup> as explained above at the end of the paragraph “Mainly employees, normal rules”, and, therefore, the income tax of 5.85% and 10.85% (up

to € 33,363 per year) is in most cases much lower than the withholding tax of 20% and a tax refund is, therefore, very likely.

#### *Exemption from Dutch tax for self-employed sports players from treaty countries*

In 2007, The Netherlands has made a radical change in its taxing rules for non-resident self-employed sports players from countries with which The Netherlands has concluded a bilateral tax treaty, regardless whether they play in Dutch teams or on their own. The Netherlands has removed its withholding tax unilaterally, because a study showed that the tax revenue was very low (5 million euros) and the administrative expenses were relatively high (1,6 million euros). The exemption from Dutch source tax applies to sportsmen (and artists) from 94 countries, even though The Netherlands has concluded in 90 of these treaties a provision comparable to art. 17, giving The Netherlands as the performance country the right to tax the income. But The Netherlands has come to this exemption, because the trade-off between the tax revenue and administrative expenses was good and The Netherlands trust that taxation in the residence country is secured.

#### *Normal tax rules for self-employed sports players from non-treaty countries*

But for self-employed sports players from non-treaty countries, the tax rules have remained as they are described above under “Contract longer than three months” and “Short term contract”. For long term contracts, no Dutch tax is due and for short term contracts the tax burden can be brought down (with some effort) to at least 5.85%-10.85% Dutch income tax from the profit on the performance fee.

#### *No exemption for residents and employees*

The unilateral exemptions from this paragraph do not apply to foreign sports players who have become resident in the Netherlands or are still non-resident but working as employees with a Dutch team.

#### *Image rights and endorsement income*

In the Dutch legal system, image rights can be recognised and endorsement income can be connected. It may refer to the

portrait of a person or to his reputation, i.e. how he is perceived by the public. Sports persons have an interest in controlling the commercial use of their image, which means that they want to protect their image rights. This is legally supported by the Dutch Copyright Act<sup>33</sup>, the Civil Code<sup>34</sup> and the Benelux Convention on Intellectual Property<sup>35</sup>. But, in practice, a sports person may be limited in the commercial exploitation of his image because of contracts which his club or the federation has agreed with sponsors. With contracts as employees, sports persons restrict the use of their image rights.<sup>36</sup>

The Dutch tax authorities (*Belastingdienst*) have a very defensive approach towards image rights structures, especially when they have been set up for players either originating from or starting to work in the Netherlands. They have brought several cases to the tax courts, which decided mostly in favour of the tax authorities, because they found the contracts for the split of the image rights from the employment contract not realistic and only meant to be constructed for tax avoidance. With the broad scope of taxable employment income in the Dutch Wage Tax Act, the payments for the image rights were taxed as net income for the sports player, but had to be paid on assessment by the club/employer.<sup>37</sup>

Incoming sports persons having a high profile, which was already protected abroad and structured with a separate image right company, might have the chance to be accepted by the Dutch tax authorities, but this will only be on rare occasions.

This may be different in other sports than football, especially for self-employed sports persons. They can use image rights structures and receive endorsement income without any taxation in the Netherlands, because there is no Dutch source tax on outgoing royalties. The Dutch tax authorities very often do not have an interest in auditing these structures, because also prize money is unilaterally exempted from Dutch source tax for non-resident sports persons, when they come from a treaty country, as explained above under “Exemption from Dutch tax for self-employed sports players from treaty countries”. This means that source taxation as in the Agassi case in the UK<sup>38</sup> and the Goosen case in the US<sup>39</sup> can only happen in the Netherlands for self-employed sports persons not residing in a treaty country.

<sup>27</sup> Art. 5a(2) Wage Tax Act and art. 7.2(3) Income Tax Act. These articles only specify a taxing right for short term contracts. Contracts for a longer period than three months therefore, fall outside of the scope of the Dutch national tax rules.

<sup>28</sup> Art. 5a(2) Wage Tax Act.

<sup>29</sup> Art. 35 Wage Tax Act.

<sup>30</sup> Art. 35(4) Wage Tax Act and art. 12a Practical Guidelines Wage Tax Act (*Uitvoeringsbesluit loonbelasting*). This is called in Dutch: *kostenvergoedingsbeschikking*.

<sup>31</sup> Art. 12a(7) Practical Guidelines Wage Tax Act (Dutch: *Uitvoeringsbesluit loonbelasting*). This is called in Dutch: *kleinevergoedingsregeling*.

<sup>32</sup> Art. 19 *Besluit uitbreiding en beperking kring verzekerden der volksverzekeringen*.

<sup>33</sup> Dutch: *Auteurswet*.

<sup>34</sup> Dutch: *Burgerlijk Wetboek*.

<sup>35</sup> Dutch: *Benelux-Verdrag inzake de intellectuele eigendom*.

<sup>36</sup> See Steffen Hagen, “Sports Image Rights in The Netherlands”, in: *The International Sports Law Journal*, 2011/3-4, p. 115.

<sup>37</sup> These court decisions all dealt with football players (who are employees in The Netherlands). Gerechtshof Den Haag 10 October 2003, NTFR 2006/563, Gerechtshof Arnhem 31 August 2004, NTFR 2004/1497, Gerechtshof Amsterdam 10 March 2005, NTFR 2005/569 and the criminal case Rechtbank Arnhem 24 November 2005, LJN AU6758

<sup>38</sup> UK: HL 17 May 2006, *Agassi v. Robinson* [2006] UKHL 23.

<sup>39</sup> US: TC 9 June 2011, *Goosen v. Commissioner*, 136 T.C. No. 27.

## **Elimination of double taxation, exemption or credit**

### *Importance on two sides*

Elimination of double taxation is important on two sides:

- 1 for foreign sports players who have become resident of the Netherlands and also perform in other countries; and
- 2 for non-resident sports players who are exempted from Dutch withholding tax or only pay the low income tax rates without general social security.

### *The exemption method still in eight Dutch tax treaties*

The Netherlands has still concluded the exemption method in its bilateral tax treaty with eight countries:

<b>Dutch residents with foreign income</b>	<b>Non-residents with Dutch income</b>
Germany (1959)	Belgium (if income is taxed in NL)
Ireland	Germany (if income is taxed in NL)
Israel	Israel
Luxemburg	Luxemburg
Morocco	Morocco
Singapore	Singapore
Spain	Spain
Thailand	Thailand

### *Dutch resident sports players*

Dutch resident sports players are exempted (with progression) from Dutch income tax for income from sports activities in the eight countries mentioned in the left col-

umn, regardless whether or how much tax has been levied in these countries.<sup>40</sup> For football players this can be an interesting advantage, because in the UEFA competitions no withholding tax is levied.

The tax credit method applies to source tax on income from other countries than the eight mentioned above. This means that the foreign tax can be credited against the Dutch income tax (and not against the general social security), but not more than for the Dutch income tax which is due on this foreign income. This might lead to an excess tax credit, especially because the Dutch income tax rates in the first two brackets are only 5.85% and 10.85% and the foreign tax is most often higher. This excess tax credit can be forwarded to the next taxable year.

### *Non-resident sports players in Dutch teams with exempted or low taxed Dutch income*

Non-resident sports players in Dutch teams have to file their Dutch income in the income tax return in their residence country. The method to eliminate double taxation will be specified in the bilateral tax treaty with The Netherlands and is the tax exemption method for the eight countries mentioned above in the right column of the table. Belgium<sup>41</sup> and Germany<sup>42</sup> have set the condition that the income must effectively be taxed in The Netherlands to obtain the tax exemption. When this is at the low level of 5.85% or 10.85%, the Belgian and German condition leads to a considerable tax advantage. In the other six countries, even the Dutch unilateral exemption leads to tax exemption for the Dutch income and to double non taxation.

But in most of the Dutch bilateral tax treaties, the tax credit method has been included, which means that not more than the Dutch tax can be credited against the foreign income tax.

## **Foreign teams in The Netherlands**

### *Self-employed*

Foreign teams are considered to be self-employed when visiting The Netherlands for matches, competitions and tournaments. This includes the team members, who very often are employees of the foreign team and, therefore, not employees of

the Dutch organizer.<sup>44</sup>

The same as for individual self-employed non-resident sports players, The Netherlands has a 20% withholding tax from the gross performance fee for non-resident sports teams.<sup>45</sup> This tax is not levied from the individual team members, but from the team in total. The team can apply for a written approval from the Dutch tax authorities (*Belastingdienst*) for the deduction of its expenses<sup>46</sup> or can apply the fixed amount of € 163 per team member per performance.<sup>47</sup> After the year, the individual team members can file income tax returns, which will give them tax refunds, because it is very likely that they will perform for less than three months in The Netherlands and are, therefore, exempted from the general social security.<sup>48</sup> which means that in the first two tax brackets only the rates of 5.85% and 10.85% (up to € 33,363 per sports player per year) apply to them.

### *Unilateral tax exemption (94 tax treaty countries)*

Also for non-resident sports teams, the Netherlands has made in 2007 the radical change in its taxing rules, leading to a unilateral exemption from Dutch source tax for sports teams from countries with which the Netherlands has concluded a bilateral tax treaty. As explained above under “Exemption from Dutch tax for self-employed sports players from treaty countries”, The Netherlands has come to this action because a study had shown that the tax revenue was very low (5 million euros) and the administrative expenses were relatively high (1,6 million euros). The Netherlands has concluded tax treaties with 94 countries, which means that the exemption applies to most of the visiting sports teams.

The foreign sports team can prove its residency in one of the treaty countries with the passports of the majority of its team members. This simplified procedure avoids that residence certificates from the foreign tax authorities for the team members are necessary for the exemption and gives easy access to the unilateral tax exemption.

### *Normal tax rules for sports teams from non-treaty countries*

For sports teams from non-treaty countries, the tax rules have remained as they

<sup>40</sup> This has been confirmed in Hoge Raad 9 Februari 2007, BNB 2007/142-144 and Gerechtshof Den Bosch 29 June 2012, *NTFR* 2012/1836.

<sup>41</sup> See art. 23(1) of the tax treaty between Belgium and The Netherlands.

<sup>42</sup> See § 50d Abs. 9 *Einkommensteuergesetz*.

<sup>43</sup> Art. 5b Wage Tax Act (Dutch: *Wet op de loonbelasting*).

<sup>44</sup> Art. 5a(4) Wage Tax Act.

<sup>45</sup> Art. 35g Wage Tax Act.

<sup>46</sup> Art. 35g(4) Wage Tax Act.

<sup>47</sup> Art. 12a(7) Practical Guidelines Wage Tax Act (Dutch: *Uitvoeringsregeling loonbelasting*).

<sup>48</sup> Art. 19 *Besluit uitbreiding en beperking kring verzekerden der volksverzekeringen*.

are described at the beginning of this paragraph. But it also means that the tax burden can be brought down (with some effort), either to nil because of the deduction of expenses or to 5.85%-10.85% income tax of the team members' income.

## Conclusions

Incoming team sports players in The Netherlands will mainly be employees, either from a Dutch team or from a foreign team visiting The Netherlands. Sometimes sports teams can also have self-employed sports persons. The Dutch tax rules for resident employees and self-employed are different regarding deductions, but have the same tax rates. Where foreign employees may be entitled to the special 30% rule, the self-employed can deduct their business expenses and have special allowances for small businesses and self-employed work.

Residence is an important deciding factor, because Dutch residents are taxable for their worldwide income in The Netherlands. They can have a foreign tax credit or exemption for their foreign source income. Unfortunately, international taxation very often leads to excessive taxation. When the exemption method applies, also double non-taxation may occur.

Internationally, most countries have a national withholding tax on performance income for visiting sports teams. This is supported by the OECD recommendation to include art. 17 for sportsmen (and artists) in bilateral tax treaties. The Netherlands, however, in 2007 removed its source taxation for visiting sportsmen and teams, when they reside in a country with which The Netherlands has concluded a bilateral tax treaty. In 2011, The Netherlands also decided that it does not want to include art. 17 anymore in its future bilateral tax treaties.

UEFA gets around the problem of international taxation of sports income with exemptions for the taxation at source for the Champions League, Europa League and the European Championships (as in EURO 2012).

Foreign sports players in Dutch teams will normally become resident employees. For some of them the 30% rule can be obtained. From self-employed team members, who remain non-residents and come from a treaty country, no Dutch source

tax is levied, but they need to file in their residence country. In eight Dutch tax treaties the exemption method applies, which leads to double non-taxation as result. This also applies to foreign sports teams from treaty countries.

Protection of image rights is very well possible under Dutch civil law, but image rights structures with offshore companies for sports persons working as employees are very often rejected by the Dutch tax authorities (Belastingdienst) and this has been confirmed by the Dutch tax courts. This may only be different for already famous sports persons arriving in The Netherlands and becoming employees. Self-employed non-resident sports persons can structure their image rights and endorsement income without obstacles in The Netherlands, especially when they reside themselves in a treaty country.

The final conclusion is that the Dutch tax system for incoming team sports players has some planning opportunities, especially for non-resident self-employed sports persons. But often the foreign sports players will become employees of Dutch teams and resident in The Netherlands and when they cannot obtain the 30% rule they will be treated equally as Dutch employees.