

# COUNTRY DIGEST

## Guidance Clarifies Tax Treatment of Dredge Workers

The Belgian tax authorities on October 26 published a practice note (Ci.R9. Div. 607/317) clarifying the tax regime for employees working aboard dredgers.

The tax authorities note that in principle, dredging projects fall under articles 5 and 7 of Belgium's tax treaties. This means their profits are taxable in the country where the enterprise is set up unless it has a permanent establishment in the country where it works. Only Belgium's double tax agreements with Hong Kong and Macao<sup>1</sup> list dredging projects as examples of projects that constitute a PE.<sup>2</sup> (For the Belgium-Hong Kong DTA, see *Doc 2003-26395* or *2003 WTD 240-20*. For the Belgium-Macao DTA, see *Doc 2006-13962* or *2006 WTD 143-7*; for the Dutch text, see *Doc 2006-13963*; for the French text, see *Doc 2006-13964*.)

Dredging as such is not a form of international traffic as referred to in treaty article 8 on shipping and air transport. International traffic is the transport by ship or aircraft across borders, not between two points in the same state. Therefore, article 8 does not apply to dredging. Accordingly, article 15(3) does not apply to the crew working on a ship that carries out dredging; the crew is not taxed in the contracting state where the place of effective management of the dredging company is situated.

In the practice note, the tax authorities acknowledge that the sector has evolved significantly. Trailing suction hopper dredgers travel from a project in one part of the world to another. Such dredgers extract sand and transport it, and the tax authorities concede that when this transport across state borders is an essential part of their activities, they are involved in international traffic. The term "operation of ships and aircraft in international traffic" must be interpreted in the spirit of the conventions, the authorities said. Therefore,

profits resulting directly or indirectly from activities that are linked to the operation of ships and aircraft in international traffic fall within the ambit of article 8 of Belgium's tax treaties.

However, when dredgers merely transport sand from one side of the country to another, they are not involved in international traffic. Income from international transport falls within articles 8 and 15. Profits from such international transport and remuneration derived from work on ships carrying out this international transport are taxed in the country where the dredging company has its place of effective management.<sup>3</sup>

Remuneration paid to teams working on trailing suction hopper dredgers in international traffic — that is, when they move from their home port to a place where they will extract sand, when they move from one project to another, or when the dredger comes home for maintenance or a normal revision — is covered by article 15(3) (which generally corresponds to the OECD model convention). Article 15(3) also applies when the trailing suction hopper dredger is used as an accessory for activities that are not, strictly speaking, carried out in international traffic. However, when the dredging is the principal activity and is carried out in the territory of the other state, the remuneration of the crew is taxable in the state where the employment is exercised in accordance with article 15(1) and (2).

The dredging company must certify to the tax authorities that a trailing suction hopper dredger is operating in international traffic and, upon request, must provide evidence (just as any taxpayer who invokes the benefit of a tax treaty). That tax has been paid or withheld at source in the other state does not mean that the income is tax exempt in Belgium.

As for the crews working on dredgers, the practice note distinguishes three situations:

<sup>1</sup>The Belgium-Macao DTA is awaiting ratification.

<sup>2</sup>Article 5(2) of the Hong Kong DTA cites projects lasting six months within any 12-month period. Article 5(3) of the Macao DTA cites projects lasting 12 months.

<sup>3</sup>A footnote to the practice note states that the tax treaty with the Netherlands does not refer to international transport but that working aboard a ship is sufficient for the remuneration paid to the staff to be taxable in the state where the dredging company has its place of effective management.

- Members of the crew employed on dredging ships used in international traffic are taxed in the state where the dredging company has its place of management in accordance with article 15(3) of the tax treaties signed by Belgium.
- Staff employed on dredgers that are not used in international traffic are taxed in the state where they work in accordance with treaty article 15(1) unless the following conditions are met (in which case article 15(2) applies):
- the workers are present in the other state for a period or periods not exceeding in the aggregate 183 days in any 12-month period commencing or ending in the fiscal year concerned;
  - the remuneration is paid by, or on behalf of, an employer who is not a resident of the other state; and
  - the remuneration is not borne by a PE that the employer has in the other state.

- Employees working on a dredger who work in a country with which Belgium has not signed a tax treaty will be taxed in Belgium, but they are entitled to a 50 percent tax reduction for the part of their income that has been taxed abroad in accordance with article 156(2) of the Belgian Income Tax Code.

Belgian companies have a worldwide reputation for dredging. Companies such as Jan de Nul N.V., Baggerwerken Decloedt & Zoon N.V., and Dredging International (of the DEME Group) have longtime expertise in dredging, having been involved in dredging projects such as the Suez Canal and the Panama Canal expansion, as well as land reclamation projects such as the Palm Islands in Dubai. Through these major projects, they have experienced rapid and sustained growth over the last decade, making them leaders in the dredging market. ◆

◆ *Marc Quaghebeur, Vandendijk & Partners, Brussels*