

Spain; Netherlands

Spanish Tax Authorities Assert Exclusive Right to Tax Employment Income of Spanish Resident Working Remotely for Dutch Company

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The General Directorate of Taxes has published a ruling in the last week of December 2022, clarifying that employment income from work performed by digital means for a Dutch employer is a taxable income under Spanish personal income tax and can be subject to withholding obligations in Spain.

Specifically, the tax authorities analysed the tax treatment of a natural person, who is a Spanish tax resident, and is going to telework as an employee for a Dutch company without the need to be physically present at the workplace situated in the Netherlands.

The tax authorities concluded that such employment income can only be taxable in Spain. They referred to the commentaries of Article 15 of the [OECD Income and Capital Model Convention](#) to interpret that, pursuant to Article 16 of the [Netherlands - Spain Income and Capital Tax Treaty \(1971\)](#), taxation of employment income in the Netherlands would require that the employee had physically worked in the other state.

They also clarified that the Dutch company may be subject to withholding obligations in Spain if it operates in the Spanish territory by means of a permanent establishment or, otherwise, if the income constitutes a deductible expense for obtaining other income which would be subject to the non-resident income tax, such as income derived from the provision of services, technical assistance, installation or assembly work.

The full text of the ruling (V2223-22) is available [here](#) (in Spanish only).

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