

II.H.2 International transport – Heavy lift shipping



Pioneering Spirit

Pioneering Spirit (formerly Pieter Schelte) is the largest construction vessel in the world. Inspired by the offshore heavy lifting pioneer Pieter Schelte Heerema (1908–81) and designed completely in-house, the vessel is designed for the **single-lift installation** and **removal** of large oil and gas platforms and the installation of record-weight pipelines.

The emergence of *Pioneering Spirit* signifies a step-change in offshore installation and decommissioning. Capable of lifting entire platform topsides of up to 48,000 t and jackets up to 20,000 t in a single piece, she significantly reduces the amount of offshore work associated with installation and decommissioning, moving the work onshore where it is safer and more cost effective.

Also built to install record-weight pipelines in all water depths, with an S-lay tension capacity of 2000 t, she surpasses *Solitaire* as the world's largest pipelay vessel.

Pioneering Spirit commenced pipelay operations on the TurkStream project in the Black Sea in summer 2017. Despite laying 32-inch pipe at depths of 2200 m, she consistently averages 5 km per day. Never before has such large-diameter pipe been laid at such depths.



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Instantie	Hoge Raad
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Formele relaties	Conclusie: ECLI:NL:PHR:2021:441 In cassatie op : ECLI:NL:GHDHA:2020:1572
Rechtsgebieden	Belastingrecht
Bijzondere kenmerken	Cassatie
Inhoudsindicatie	Art. 15, lid 3, Verdrag Nederland-Zwitserland 2010. In (af)bouwfase verkerend schip dat bestemd is om pijpen te leggen en boorplatforms te verplaatsen. Oefent de bemanning de dienstbetrekking uit aan boord van een schip dat in internationaal verkeer wordt geëxploiteerd?
Vindplaatsen	Rechtspraak.nl Viditax (FutD), 24-12-2021 V-N Vandaag 2021/3153 FutD 2022-0015 NTFR 2022/79 met annotatie van dr. mr. M van Dun V-N 2022/2.9 met annotatie van Redactie

 [Verrijkte uitspraak](#)

Uitspraak

HOGE RAAD DER NEDERLANDEN

BELASTINGKAMER

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Supreme Court

2.1 The interested party lived in the Netherlands in 2014 and 2015.

2.2 As of 1 April 2014, the interested party is employed by [A] SA (hereinafter: [A]), established in Switzerland. He performs his activities on ships of [B] SA (hereinafter: [B]) affiliated with [A]. The head office of [B] is located in Switzerland. [B] provides offshore services to clients in the oil and gas industry. The main services are the laying of pipelines on the seabed and the removal of platforms.

2.3 The interested party worked in 2014 and throughout 2015 on board [C], a vessel used for the lifting and moving of large platforms and the laying of pipelines for oil and gas transport (hereinafter: the vessel). The ship was built at a yard in South Korea and was transferred to [Q] from November 18, 2014 for completion. The ship was docked in [Q] on January 8, 2015. The ship set sail for the first time in 2016.

2.4 In 2014 and 2015, the interested party did not perform any work in Switzerland and his wages received from [A] over those years are not included in the tax there.



II.H.2 International transport – NL-CH Treaty & Court interpretation

NL-CH treaty

ARTICLE 15— Dependent Personal Services

- (3) Notwithstanding the preceding provisions of this Article, remuneration derived in respect of an employment exercised aboard a ship or aircraft operated in international traffic, or aboard a boat engaged in inland waterways transport, may be taxed in the Contracting State in which the place of effective management of the enterprise is situated.

ARTICLE 8— Shipping, Inland Waterways and Air Transport

- (1) Profits from the operation of ships or aircraft in international traffic shall be taxable only in the Contracting State in which the place of effective management of the enterprise is situated.

Supreme Court

- 3.2 Referring to the comments on Article 3(1)(e) and Article 8 of the 2008 OECD Model Convention, the Court held that the ship was not operated during the years 2014 and 2015 for the carriage of persons or goods in international traffic. In addition, the Court points out that during the construction or completion period in 2014 the ship spent more than ten months at the yard in South Korea and in 2015 in the port for almost the entire year. Although it can be assumed that persons and goods were transported during the shipment of the ship from South Korea to [Q], this concerns a specific transport movement during the construction phase of the ship with a view to its outfitting.

OECD 2008

ARTICLE 3 GENERAL DEFINITIONS

1. For the purposes of this Convention, unless the context otherwise requires:
- e) the term “international traffic” means any transport by a ship or aircraft operated by an enterprise that has its place of effective management in a Contracting State, except when the ship or aircraft is operated solely between places in the other Contracting State;

ARTICLE 8

SHIPPING, INLAND WATERWAYS TRANSPORT AND AIR TRANSPORT

1. Profits from the operation of ships or aircraft in international traffic shall be taxable only in the Contracting State in which the place of effective management of the enterprise is situated.



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Supreme Court

4.1 The second complaint, which is directed against the judgment of the Court set out in 3.2, argues that the aim and scope of Articles 8 and 15(3) of the Treaty entail that the wage costs of employees during the construction or completion of a ship and transport movements prior to its first commercial activities fall within the scope of the latter paragraph.

4.2.2 It follows from the OECD commentary on Article 15 of the 2008 OECD Model Convention that this allocation rule is related to and based on the principle of Article 8 of the 2008 OECD Model Convention. The allocation rule included in that article for profits from the operation of ships in international traffic, refers, according to the OECD commentary, to profits directly related to commercial transport of persons and goods by ship in international traffic and related and ancillary activities. Given the great significance of the OECD commentary for the interpretation of the Convention, the foregoing also applies to the interpretation of Article 15(3) of the Convention.

OECD 2008

4. The profits covered consist in the first place of the profits directly obtained by the enterprise from the transportation of passengers or cargo by ships or aircraft (whether owned, leased or otherwise at the disposal of the enterprise) that it operates in international traffic. However, as international transport has evolved, shipping and air transport enterprises invariably carry on a large variety of activities to permit, facilitate or support their international traffic operations. The paragraph also covers profits from activities directly connected with such operations as well as profits from activities which are not directly connected with the operation of the enterprise's ships or aircraft in international traffic as long as they are ancillary to such operation.

4.1 Any activity carried on primarily in connection with the transportation, by the enterprise, of passengers or cargo by ships or aircraft that it operates in international traffic should be considered to be directly connected with such transportation.



Supreme Court

4.2.3 The facts established by the Court allow no other conclusion than that the ship is intended for the lifting and displacement of large platforms and the laying of pipelines for oil and gas transport, and that any transport of persons and goods on the ship is ancillary to the main activity. Then it cannot be said that the results from the operation of the ship are directly related to the commercial transport of persons and goods by ship in international traffic and related and ancillary activities. The question of whether Article 15(3) of the Convention also applies during the construction phase of a ship intended for use in international traffic therefore needs no discussion. The complaint fails.

Thoughts:

1. If article 15'3 does not apply, are we back at the 183 day rule?
2. Was the taxpayer right in claiming that article 15'3 includes wage costs during construction, completion and pre-commercial voyages?
3. Does the laying of 5 km of pipes per day not include transportation as much as laying, or does "leaving the pipe behind" exclude transportation?
4. If a platform is moved from international waters (e.g. 220 km off shore from Norway) to a Norwegian disposal yard, is that not international transport?

