IAEL INTERNATIONAL ASSOCIATION OF ENTERTAINMENT LAWYERS

Nationalism vs Globalism: Regional and Transnational Legal Issues Reshaping the Entertainment Industry.

Edited by William Genereux & Marijn Kingma

Message from the President: Jeff Liebenson

Welcome to our 2021 IAEL book. The topic of Nationalism vs Globalism has exceeded my expectations, even covering issues arising from working during a pandemic.

We can only hope that the devastation the pandemic has brought across the globe will subside and we will once again meet in France in next June for our annual IAEL meeting during Midem.

The ongoing relevancy of the topics in the book reflects the world we live in today as the rise of nationalism separates countries and globalization brings them together. While the book focuses on digital and other entertainment deals crossing borders, it also addresses what legal needs still should be considered on a national or country-by-country basis.

I want to thank Marijn Kingma from The Netherlands and William Genereux from Canada, our co-editors who have brought their experiences from where they live and their legal expertise to life in this book. Our contributors from around the world illuminate these developments from their own perspectives which inform their articles.

Thanks to Duncan Calow and Marcel Bunders for your continued support, guidance and humor with respect to the many adversities we have weathered these past two years.

Our hope is that exploring these legal trends will help us in guiding our clients to deal with our multicultural world of entertainment law, notwithstanding the nationalistic urges of our time. Perhaps this mirrors our IAEL meetings with members from around the world enjoying our different cultures and coordinating our common interests.

We hope this book furthers that spirit, our 35th annual book published by the IAEL, Nationalism vs Globalism: Regional and Transnational Legal Issues Reshaping the Entertainment Industry.

Editors' Introduction: William Genereux & Marijn Kingma

When we had our last IAEL General Meeting in June 2019, we could not have foreseen we would not be able to come together in Cannes for the next two summers – or that as a result of a pandemic we would not be publishing the entire book until well into 2021. We also could not have foreseen how relevant the topic of our book would turn out to be. Over the last year and a half we have been on a global rollercoaster ride and it has become more clear than ever that we do not live in separated worlds, and that national borders do not mean anything when push comes to shove. We have also learned that global efforts are needed to solve global problems. Many countries came together to find the vaccines needed to get us out of this situation. The COVAX program is trying to provide global equitable access to vaccines so that not just some countries, but the whole world can hopefully return back to normal soon. Hopefully we will learn from this experience for that other, even more pressing, global emergency: climate change.

Although it was a difficult decision to postpone the release of our book last year, we believe it was the right decision. It gave us the opportunity to include additional contributions dealing with the impacts of the pandemic on the entertainment industry and take a look at how to move forward. The chapters that were written last year have been updated, resulting in a comprehensive publication that we believe was worth waiting for.

The chapters in this year's IAEL book explore the longstanding conflict between nationalism and globalism as it relates to the entertainment industry. Originally we had intended to use the term "globalization" in the title rather than globalism. That probably would have been more correct, insofar as globalization is a word used by economists to describe a process by which businesses or other organizations develop international reach or increase the international scale of their operations. Globalism, on the other hand, tends to be more of a raw, emotional, political concept. It describes a potential threat that can be rallied-against. It's often rejected by nationalists, conspiracy theorists and indeed anyone who might be content to sit in their own backyard and let the rest of the world be damned. It's used often in a defensive way – to describe existential threats that are perceived to have been created by others, like having rules or market forces emanating from outside our own borders that nevertheless come to affect us.

We decided to go with the more difficult word, globalism, because it more accurately describes the zeitgeist of our times. Our entertainment industry already is global, and international trade, which is what globalization is all about, has been occurring and disrupting markets since at least the early days of spice trading thousands of years ago. Now of course the Internet allows us unprecedented new types of access to foreign markets and the promise of having our services and products seen, heard and used by countless millions of others. This development has moved up a gear due to the pandemic. But here's the thing, there are a lot of vested interests that get in the way. The forces of disruption invariably leave footprints across the backs of incumbents. There usually are winners and losers, and even the venue where this all happens – our planet Earth – becomes a stakeholder as we take environmental issues into consideration. The discussion about what's best for the entertainment industry moving forward becomes nuanced, because it's not simply about changes that make things cheaper, faster or most transparent. Folded into the discussion are issues about people, culture, autonomy, stability, flexibility, privacy, freedom and sexuality. The tension between all these forces is beguiling. It makes for interesting reading but leads to much deeper conclusions. One region or territory might want to defend its culture from being diluted by outside influences, yet might want that same culture to find an audience abroad. A territory or region might enact laws that purport to have transnational reach, yet this might directly encroach on the sovereignty of others. Our willingness to embrace change is tempered with fears of losing the status quo. Ultimately, these are all political issues laced with policy considerations that demand to be understood.

The 2020-2021 IAEL book examines an array of regional and transnational forces that currently are shaping the entertainment industry. Chapters have been subdivided into three major categories, as shown in the table of contents. The first category focuses on issues in specific jurisdictions and markets. The second attempts to map-out the expansion of regional forces into wider applications. The third seeks to bring a holistic view that reconciles many of the vital issues affecting the industry at large, and which are shaping our future world.

The first part of the book focuses on regional issues and differences. This part includes articles on sometimes underexposed but increasingly important markets: India and Nigeria. A contribution from Italy focuses on documentary films and cultural heritage, and the viability of specific Italian legislation in the light of Europe's DSM Directive. There are several articles about major legislative developments in the U.S. and the EU, including the U.S. Music Modernization Act and the EU Audiovisual Media Directive. A comparative contribution from three of our authors describes the limitations and exceptions to copyright in three major territories: the EU, the U.S. and Asia.

The second part of the book shows that regional developments can have global consequences. The GDPR, for example, has left its marks all around the world as countries are adapting their data protection legislation to keep up with Europe's strict rules. The infamous article 17 of the EU DSM Directive is bound to have an impact on the rest of the world. These global influences of regional legislation are discussed in this part of the book. This chapter also looks at the global impact of new technology and new industry economics. Important issues that are discussed include licensing in the age of globalization, how to deal with aggregators, and new types of platforms. And let's not forget something that we all have in common: paying taxes. A contribution from the Netherlands looks at the influence of globalization on international tax principles. Finally, we have an article that focuses on jurisdiction of U.S. courts. Under what circumstances can a non-U.S. entity be hauled into a U.S. Court thousands of miles away to defend itself under United States law?

The third part of the book takes a look at some of the broader social and environmental issues of our current and future world. A contribution from Denmark discusses the changing expectations for artists as global role models. Another article looks at the (im)possibility to regulate fake news and political advertising on social media platforms. We also have a very helpful contribution on transgender music artists and the legal issues they encounter. We are also very pleased to have an article on what is no doubt the biggest challenge of our times: global warming. And then there are pandemic-related chapters that we never thought we'd be writing about. They are intended to provide useful information. There's information on data protection laws and privacy from the perspective of several different global regions, and there's information on how the pandemic has affected contractual relations. We also have chapters looking at the effect of the pandemic on future of the entertainment market, such as the acceleration of the shift to streaming and the changed relationship between brands and customers. As the global entertainment industry becomes more entwined, we believe these topics are instructive for everyone in all regions.

We would like to thank IAEL's president Jeff Liebenson for his time, effort and leadership as we've planned, changed our plans, planned again and finally executed on the making of our book. We would also like to thank Janneke Popma, associate at Höcker, for her indispensable organizational skills. Additionally, the authors all need to be recognized for their creativity, diligence and flexibility. A lot of energy that could have been directed toward remunerative, billable work instead has been gifted to us all, so that we can see the issues in their chapters through their specialists' eyes. Without the generosity of all the contributors this book could not have happened. Thank you everyone.

Finally, to quote Vera Lynn who passed away last summer
at the respectable age of 103: we'll meet again.
William Genereux & Marijn Kingma

Entertainment and Taxing the Digital Economy

"It seems that states are protecting their own tax revenue in a globalizing world and it is interesting to see how a new balance in cross-border taxation can be found with other basic principles, while at the same time double taxation should be avoided."

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1. Introduction

International tax principles are changing at the moment, facing the challenges of globalization and the digital economy. Companies can easily move their head offices to states with low taxation and the use of digital content does not mean that tax is paid in the state where the users are living. Examples are Google, Apple and Amazon, but also YouTube, Spotify and Netflix. Some states have already installed a Digital Tax (source withholding tax) unilaterally, especially for companies without a "permanent establishment" (PE) in their state, but this can cause double taxation because the income is also taxed in the residence state as part of the worldwide income. France wanted to introduce such a tax of 3% in September 2019, but got into an argument with the US, which contended that the proposal unfairly targeted US businesses and therefore threatened with import tariffs on $2.4 billion of French goods. The two states reached an agreement to wait for the OECD and its initiatives for new taxation rules under the Unified Approach (Pillar One and Two). The OECD has come with proposals, which are now being discussed by the nearly 140 states of the Inclusive Framework.[1]

This chapter will show the impact of these developments on the digital entertainment business, but will also look at the possible effects on the live industry. It seems that states are protecting their own tax revenue in a globalizing world and it is interesting to see how a new balance in cross-border taxation can be found with other basic principles, while at the same time double taxation should be avoided.

The proposals for the Digital Tax systems have the likes of the existing taxing rules for performing artists (and sportsmen): taxation in the state where the services are used, also without a permanent establishment (PE), and most often from gross income, without deduction of expenses. But different from tax on performance income, the Unified Approach proposes a high threshold combined with a low withholding tax rate from the gross income. It would be very welcome if the two tax systems could be connected and performance income could follow the new tax rules for digital companies.

2. Tax challenges coming from the digital economy

The digital economy has become massive and is still growing. Seven tech giants are now among the top 10 public companies by market capitalisation.[2] In Europe, the top five e-commerce retailers have sustained annual growth rates of around 32% between 2008 and 2020, while the normal retail sector is happy with an average of just 1% annual growth in revenue in the same period. Revenues from streaming of

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music grew with 23% in 2019 and brought the share of streaming in global revenues to 56%, while downloads and physical revenue went down with -5%. Streaming services as Apple Music and Spotify are taking over the market for recorded music.[3]

The rise of the digital business models is laying bare the main limitations of the existing international tax systems. Tax rules have been based traditionally on the principle of "permanent establishment" (PE): taxation is linked to the place where all or part of business activities are physically carried out.[4] Digital companies may profit from international structuring and create lower effective average tax rates than more traditional 'brick-and-mortar' companies, also because it is easier to use existing tax planning strategies (often via tax havens). This has caused states to complain that their citizens are paying increasing amounts for foreign digital content from which these states can hardly get any tax revenue.

3. Base Erosion Profit Shifting (BEPS) program of the OECD

Treaty-shopping and the use of tax havens are not new and have been the practice for many multinational companies, especially for royalties and other income from copyright and intellectual property. This has brought the international tax world to action, the G20 took the initiative in 2012 and asked the OECD to start with the program "Base Erosion and Profit Shifting (BEPS)". This has led to an impressive set of Action Plans, being accepted not only by the 30 OECD Member States, but also many others. These actions are being inserted into the bilateral tax treaties with an impressive Multilateral Instrument (MLI), which changes all the tax treaties of a state at once. It takes some time before every state accepts the exact wording of the MLI, but when so, the change goes much faster than a renegotiation of all the bilateral tax treaties, because that would take ages and can hardly ever be complete.

BEPS Action Plan 6 discusses treaty shopping and proposes states to choose between a Principal Purpose Test (PPT) or Limitation on Benefits (LOB) rule. With a PPT, companies need to show what the main benefit of their international structure is. When this is purely tax savings without any normal business reason, the structure can be neglected by one or both states. With a LOB, a taxpayer/company needs to prove that he has enough connection with the state to make use of the tax treaty advantages. After the choice for either of these two, also other anti-conduit rules can be implemented, such as substance requirements for companies in no/low tax states (tax havens).

The OECD also strengthened the transfer pricing (TP) rules, with which can be avoided that the source state should allow a higher deduction from the taxable income than the source would like to give. Another element of the BEPS program was better exchange of information between states and the introduction of black and grey lists if states did not (fully) wanted to cooperate.

In 2019, I have described this in the chapter "Transparency and Taxation: Consequences for International Entertainers" in the IAEL Book "Keeping It Honest: Transparency and Legal Issues in the Entertainment Industry". My conclusion was that there is an impressive trend towards more transparency in taxation, with more tools to combat "base erosion and profit shifting" following from treaty-shopping. The BEPS program has been embraced by nearly 140 states, working together under the name "Inclusive Framework".

4. Unilateral Digital Tax initiatives

But the BEPS project was not enough, because it did not cover the challenges of the Digital Economy. States want a share of the tax pie, also when digital companies do not have a place of business on their territory. Therefore, some states started with initiatives for a unilateral digital service tax (DST) of 2 to 7% from the gross income which these digital companies collected from consumers in their state, directly on the bank in the residence state (or elsewhere).

In July 2019, France introduced a 3% DST on the gross income from digital services of companies with global revenues of € 750 million per year or more

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and above € 25 million within France. Other European states have also shown intentions , proposed or already implemented[7] a Digital Service Tax. This is the same for states outside of Europe, although not yet so many.[8]

Interesting in Europe is that the EU does not have authority over direct taxation; the Member States keep their authority for these rules and rates. This means that the EU cannot directly stop the implementation of national, unilateral DST's, which has been confirmed in two decisions of the European Court of Justice (ECJ), about Hungary.[9] Vice-president Vestager of the EC has stated that the Commission supports the Member States which impose unilateral digitaxes, because these measures removes unfair competition.

It is a thin line between these digitaxes (low rate from gross income) and VAT, GST or other sales taxes. For example in the US, almost half of the states have started to bring streaming services under their sales tax or are considering this. Examples are Kansas, Illinois, California, Maine, Massachusetts and Utah. Historically, state sales taxes didn't cover intangible goods and services, but this approach has changed now that digital services account for a growing portion of personal consumption. Therefore, states want the same treatment of e.g. normal cinemas and Netflix. But sales tax will make Spotify or Netflix subscriptions more expensive. At a monthly fee of e.g. $12.99 and e.g. 6% sales tax, $0.78 will be added. This might make the streaming provider less attractive, although not yet much competition with the same supply is in the market, so the streaming providers may also seem to be able to raise their prices without many consequences.

5. OECD initiative for harmonization, reactions, e.g. from Spotify

The OECD understood that it had to take action and came with an Interim Report in 2018, addressing the issue with taxing the digital economy. Then in February 2019, faced with mounting pressure from the unilateral measures, the OECD published a Working Programme aiming at international agreement and asking for comments and ideas.[10]

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Not only the nearly 140 states from the Inclusive Framework but also more than 200 organizations, institutions and associations sent in remarks to the OECD. One of the reactions came in March 2019 from Spotify.[11] The topic is very relevant for this digital streaming music platform because it has just made some profits until now, but more often and much higher losses, which means that no corporation tax in the residence state Sweden has been be due. And also not in the near future, because of the carry forward of previous losses. Therefore, DST's in the states of the users of the music would create excessive taxation for Spotify, because the foreign DST cannot be offset against Swedish corporation tax. That would mean a higher international tax burden than with only national activities.

The Spotify reaction can be summarized as follows:

a. The company recognizes that taxation in line with value creation will ensure fair taxation of all business models.
b. It has implemented the Action Plans from the BEPS project and is not using (aggressive) tax planning structures.
c. But any consensus solution should (1) not target certain businesses, (2) tax only realised profits, and (3) ensure profits are taxed only once.
d. Legal certainty, administrability and simplicity should be ensured, with clear definitions and guidelines and measures to limit the compliance burden are of paramount importance.

6. Unified Approach from Inclusive Framework and OECD

After these reactions, the OECD came in October 2019 with the proposal for a Unified Approach. This puts the focus on 'consumer-facing' businesses that create value by interacting with their consumer base even without a physical presence in the market and especially aims at digital business models. It should work for very much automated services, such as streaming, search engines, cloud services and

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online gaming. Excluded should be normal businesses, such as producers and sellers of raw materials and commodities and the financial and the transport sectors.

To avoid too much administration, a minimum threshold of € 750 mln turnover globally should be introduced before a multinational company should be taxed under the Unified Approach.

Pillar One of this Unified Approach proposes a new mechanism whereby states would be allocated three pieces of a multinational group's global profits, as three slices of global pie:

- Amount A (New Taxing Right): this new taxing right will be created for states in which services are offered, based on a share of the multinational group's global non-routine residual profits. A complicated calculation is proposed by the OECD, but in the end this Amount A should be divided over the user states and being taxed there.
- Amount B: local activities, such as marketing and distribution, in user states will be allocated fixed remunerations reflecting an "assumed baseline activity". Also this part of the profit can be taxed in the user states.
- Amount C: an additional amount over and above Amount B could be added for marketing and distribution activities "above the baseline functionality".

The three taxable profits may lead to much discussion, but the OECD proposes a "One-stop-shop mechanism", under which profits are determined by the head office state and allocated after multinational tax cooperation. And the residence state should be willing to allow tax exemptions or credits to eliminate double taxation.

Pillar Two of the Unified Approach proposes a minimum percentage of tax which every state should use to tax its portion of the global profits. This would prevent multinational companies from making use of tax competition between states because of differences in tax rates. This part is also called the Global Anti-Base Erosion Proposal (GloBE).

After the publication of the Unified Approach much concern arose about the sovereignty of individual states, if the calculation and allocation of the taxable profits should be given to the big states with head offices of multinationals, and if states should accept a minimum tax rate.

The OECD expects that there will $100 mln more tax revenue worldwide from this Unified Approach. But it is also clear that there will be losers, such as states with much foreign investment (the Netherlands, Germany, France, the UK and USA), and there will be winners, such as states without head offices of digital companies but with many consumers as users (developing states in Africa, Latin America and parts of Asia).

In October 2020, more detailed Blueprints were published for Pillar One and Two of the Unified Approach, on which also reactions could be sent in. This was done by Amazon, Netflix and Spotify, in line with the earlier response from 2019, but now with more focus on the extra administrative burden following from these new tax rules. The aim is to reach consensus about the pillars of the Unified Approach in July 2021, so that the total program can be completed before the end of December 2021. The OECD tries to get the USA on board of this program, which was not likely under the Trump Administration and might be different with Biden.

7. Comparison with taxation of live performances

DST's are similar to the taxation of performance income for artists and sportsmen (performers). This taxing right has been confirmed in Art. 17 of the OECD Model Tax Convention and also applies without a permanent establishment in the source state. This article has been taken over in almost every bilateral tax treaty and in national tax law.[12] Officially, the special provision is meant to counteract the tax avoidance behaviour of top performers moving their residences to tax havens, as repeated in the 2014 OECD Report about Art. 17 OECD Model. But unofficially, the "contribution argument" is an important reason for this deviating tax rule for performers, as can be read in 2014 between the lines of the three reasons for keeping the article. The OECD Member States

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don't want to give up the tax revenue from foreign performers appearing on their stages.

Inevitably, in practice it turned out to be difficult for states to calculate the taxable profit of visiting non-resident performers. Therefore, they discussed at OECD level to be allowed to tax the gross earnings, but at a lower tax rate than normal. This gross taxation has been inserted in 1992 in §10 of the Commentary on Art. 17 OECD Model. After then, tax rates were set at 10–30%, which was lower than normal, but because they were taken from gross they were effectively much higher than taxes on the profit. Sometimes even more than 100%, when no profit remains from the performances in the source state, but the gross fee is still taxed. The residence states of the performers need to allow a foreign tax credit (or perhaps exemption), but there are many examples of double or excessive taxation because of the gross taxation system for artists in the performance state.[13]

Within the EU, decisions by the European Court of Justice have led to changes because the non-deductibility of expenses and exclusion from normal tax settlements was against the freedom principles of the EU Treaty[14]. Nowadays in EU states, performers can choose between gross taxation at a low tax rate and net taxation at a more normal tax rate. And in 2008, the OECD has changed §10 of the Commentary on Art. 17 to the option to tax the gross or the net income from the performance.

There are similarities with the taxation of the digital economy. States have started with a rough approach, which is a gross taxation of the turnover of foreign digital companies, even when these do not have a PE in the state. The rates vary from 2% to 7% at source. And because the residence state includes the foreign turnover in the taxable worldwide income, double taxation should be eliminated with a tax exemption or credit. But even though the source tax is low, then still excessive or even double taxation can occur when profits are still marginal or when the digital companies still make losses.

The OECD understands this and is trying to create with its Unified Approach a net taxation system which would include the elimination of double taxation. With Pillar One the taxable profit is calculated and divided over the user states and residence state, while with Pillar Two the risk of excessive taxation because of the difference in tax rates is prevented.

8. Minimum thresholds

Interesting is the minimum threshold for taxing the digital economy, e.g. turnover of € 750 mln globally and € 50 mln per state. This means that smaller and medium-sized digital companies do not have to go through the same administrative procedures as majors, which can be very costly. They still can use the regular PE condition, which means that without PE in the user states no tax should be paid there, but only in the residence state.

Such a minimum threshold is also possible for performers, although yet just hardly used by states in their bilateral tax treaties. The US is very active with such a threshold, every US bilateral tax treaty has a minimum amount for artists and athletes. The 2016 US Model Tax Convention provides for a threshold of $30,000[15], but most treaties still have included $20,000 (from the 1996 and 2006 Models) or lower amounts (from before 1996).

Since the 2014 Update of the Model Tax Convention, the OECD also recognizes the wish for a minimum threshold, although it has not been included in the text of Art. 17, but it has only been mentioned as an optional restriction in §10.1–10.5 of the Commentary on Art. 17. There is an example of € 15.000, but also with the possibility to adjust this amount yearly with the growth of the economy per state and worldwide[16].

There are also unilateral initiatives for minimum thresholds, such as the personal allowance of £12,500 in the UK, which is also applicable to non-residents.
It would be very helpful for performers if such minimum threshold would be included everywhere, not only in the US bilateral tax treaties but also in others and unilateral.

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9. Conclusion

Taxing the digital economy is a major challenge. States want a share of the pie, because digital companies can have high earnings from the users, but under the current rules cannot be taxed without a permanent establishment in the state. This has brought states to unilateral tax measures such as DST’s with low tax rates taken from gross turnover in the state. Unfortunately, this is disturbing international business, because the digital companies will also be taxed in their residence states and not be entitled to foreign tax credits under the current tax rules.

The OECD has started an initiative to bring together the international tax world for this subject. That was already gathered under the Inclusive Framework after the BEPS program, mainly aimed against tax avoidance via offshore structures. Last November, the OECD has come with the Unified Approach, in which Pillar One (for the calculation and allocation of the profits) and Pillar Two (for a minimum tax rate on the profits) should lead to fairer taxation of the digital activities. Entertainment companies, such as Spotify, Netflix, YouTube, Apple and others will be affected by this and might become more expensive for the users. The aim is to complete the new tax measures before the end of 2021.

The DST’s are looking like the already existing taxation of performers, which follow from Art. 17 OECD Model. It has become clear over the years that this source taxation without the condition of a permanent establishment leads very often to excessive or even double taxation and causes much administrative expenses for performers. Therefore, the Unified Approach is a good step forward, with coordinated calculation and division of the global profits and taxing rights, but also with a high minimum threshold. It is still complicated to put this in practice for digital companies, but the small and medium sized are kept out of this new system.

It would be very helpful when this could also be used for performers. In the slipstream of the Unified Approach for digital companies, performing artists (and sportspeople) could also have a good minimum threshold in source taxation, lower withholding tax rates and a coordinated approach for the taxation of the global profits. This would take away many tax problems for them.

[1] *Under the name Inclusive Framework, these states work together to implement the actions of the BEPS Program. The OECD only has 30 Member States, but with the Inclusive Framework many more states are working together.*

[2] *Microsoft, Apple, Amazon, Alphabet, Facebook, Alibaba and Tencent (source: www.pwc.com)*

[3] *IFPI Global Music Report 2020*

[4] *As set out in Article 5 of the OECD Model Tax Convention on Income and on Capital 2017*

[5] *Such as Latvia, Norway and Slovenia (source: https://taxfoundation.org/digital-tax-europe-2020/)*

[6] *Such as Belgium (3%), Czech Republic (7%), Slovakia, Spain (3%) and the UK (2%) (source: https://taxfoundation.org/digital-tax-europe-2020/)*

[7] *Such as Austria (5%), France (3%), Hungary (7,5%), Italy (3%) and Turkey (7,5%) (source: https://taxfoundation.org/digital-tax-europe-2020/))*

[8] *Such as Canada (proposal, 3%) and Uganda (proposal, 5%) (source: https://taxfoundation.org)*

[9] *ECJ 3 March 2020, C-75/18 (Vodafone) and C-323/18 (Tesco)*

[10] *OECD (2019), "Addressing the tax challenges of the digitalisation of the economy", Public Consultation Document, 13 February 2019*

[11] *See www.oecd.org, search for "Comments Spotify 2019"*

[12] *Exceptions are Denmark, Ireland and the Netherlands. These states believe this taxation causes too much administrative work and the risk of double taxation.*

[13] *Extensive research on expenses and the effect of gross taxation on the effective tax rate has been published in D. Molenaar, "Taxation of international performing artistes", IBFD, Amsterdam (2006)*

[14] *There were three important decisions: Arnoud Gerritse, ECJ 12 June 2003, C-234/01, FKP Scorpio Konzertproduktionen, ECJ 3 October 2006, C-290/04 and Centro Equestre da Leziria Grande, 3 February 2007, ECJ 345/04.*

[15] *This is mentioned in Art. 16(1) of the 2016 US Model Tax Convention. The article has been renumbered in the 2006 US Model, when Art. 14 for self-employed had been deleted. The OECD already deleted Art. 14 in the 2000 Update of its Model, but has left this article blank since then, so that entertainers and sportspersons are still mentioned in Art. 17.*

[16] *See D. Molenaar, "Minimum thresholds in tax treaties", Bulletin for International Taxation, 2016/04.*