

INTRODUCTION ARTIST AND SPORTSMAN TAXATION

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SPECIAL RULES ARTISTES/SPORTSMEN

- Art. 17 OECD Model: since 1963 - "because of practical difficulties"
- It sets aside Art. 7 (+ 14) and Art. 15. Therefore, no PE needed in the country of work and/or no exemption for employees going abroad with or for their employer
- Art. 17(2) since 1977: also payments to others than the artiste or sportsmen fall under Art. 17
- Measure to counteract tax avoidance and non-compliance

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TEXT OF ARTICLE 17 OECD MODEL

ENTERTAINERS AND SPORTSPERSONS

1. Notwithstanding the provisions of Article 15, income derived by a resident of a Contracting State as an entertainer, such as a theatre, motion picture, radio or television artiste, or a musician, or as a sportsperson, from that resident's personal activities as such exercised in the other Contracting State, may be taxed in that other State.

2. Where income in respect of personal activities exercised by an entertainer or a sportsperson acting as such accrues not to the entertainer or sportsperson but to another person, that income may, notwithstanding the provisions of Article 15, be taxed in the Contracting State in which the activities of the entertainer or sportsperson are exercised.

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RESIDENCE STATE

- Art. 23 OECD Model – Elimination of double taxation with tax credit in the residence country
- Followed by most states, even when they have exemption method for active income
- This means extra tax in residence state if foreign tax is lower → up to normal progressive tax rates
- But ordinary credit, which means that foreign tax credit is limited to amount of residence state tax on foreign income

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1987 OECD REPORT ABOUT ART. 17

- Clear expression of mistrust (§ 7 and 8):
 - “clear evidence of non-compliance”
 - “rarely disclose casual earnings”
 - “sophisticated tax avoidance schemes, many involving the use of tax havens, are frequently employed by top-ranking artistes and athletes”
 - “relatively unsophisticated people – in the business sense – can be precipitated into great riches”
 - “travel, entertainment and various forms of ostentation are inherent in the business and there is a tendency to be represented by adventurous but not very good accountants”
- No deduction of expenses, but gross taxation, although at a lower rate (§ 94)

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WITHHOLDING TAX RATES

- Austria 20%
- Belgium 18%
- France 15%
- Germany 16%
- Italy 30%
- Spain 19% (24% for non EU states)
- UK 20%
- USA 30%

- Denmark not
- Ireland not
- Netherlands 20%, but not for treaty states

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UNILATERAL MEASURES

- Australia: right to deduction expenses, but obligation to file tax return at normal, progressive rates
- EU: deduction of expenses + option to file tax returns (after ECJ decisions)
- UK: right to deduct expenses + use personal allowance of approx. £ 11,500 p.p. per year, but obligation to file tax return at normal, progressive rates
- USA: right to deduction expenses, but obligation to file tax return at normal, progressive rates

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NEW REASONS FOR ARTICLE 17

- Discussion draft at OECD in 2010 – 2014
- Input: delete Article 17, but OECD denied this in 2014

- Reasons for keeping the article:
 - ◆ Residence state does get information about foreign income
 - ◆ Top earners are moving to low-tax jurisdictions
 - ◆ Source taxation is easy to administer

- But these reasons are wrong
 - ◆ Enough information (bank, internet)
 - ◆ Low-tax jurisdictions don't have tax treaties
 - ◆ Source taxation is administratively problematic

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BENEFIT PRINCIPLE

- Does Article 17 exist because of the tax revenue?

- Figures from Belgium – 11 million citizens:
 - 17 – 21 million euros per year
 - Years: 2014 - 2018
- Can be extrapolated to other states
- Conclusion: quite low

- On the other side: tax credits for residents entertainers and sportspersons with foreign income and tax

- Conclusion: tax earnings are nil on balance

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ALTERNATIVES IN COMMENTARY

- Commentary on Article 17 OECD Model changed in 2014
- Options for exemptions and deductions:
 1. Limitation to business activities, exclude employees
 2. Deduction of expenses
 3. Minimum threshold of 15.000 per artiste per year
 4. Exemption for activities supported by public funds
- But hardly used, besides exemption for subsidized artists or sportspersons. But threshold of 50% subsidy is high.

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OTHER MODELS

- UN Model – Article 17
- Same as OECD model, but not with 2014 Commentary, but old Commentary
- US Model 2016 – Article 16
- Two striking differences:
 - ◆ Minimum threshold in 16(1): \$30,000 p.p. per year
 - ◆ Limited approach in 16(2): only applicable when organizer can appoint the performing artist or sportsperson
- Many states accept this in tax treaties with US
- Also tax credit method in Article 23

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CONTACT DETAILS

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