

TAXING THE INCOME OF INFLUENCERS

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INTRODUCTION

- Social media platforms: Instagram, Facebook, Twitter, TikTok, Snapchat
- But also YouTube
- Free expression
- Availability to listen to anyone interesting
- After some time: some voices were louder and more interesting than others
- Start with YouTube
- Later acceleration through Instagram (2010)

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COMMERCE / MARKET

- New opportunity for commercial parties
- Link of product (or service) with an influencer
- Different from classic advertisement
- In-video support of products (or services)

- Influencers have become the new stars of this time
- Often sportspersons or entertainers, but also others
Kylie Jenner, Kim Kardashian, Whindersson Nunes Batista
- Virtual influencers
Lil Miquela, Lu do Magalu, Esther Olofsson

- Size of the market: 13 billion euro (2022)

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TAX TREATY QUALIFICATION

- Article 7 (+ 14) Business Profits (+ Self-employed)
- Article 12 Royalties
- Article 15 Dependent Personal Services
- Article 17 Entertainers and Sportspersons

- Personal scope of Article 17 OECD Model
- Commentary:
 - ◆ §3: Examples of entertainers
 - ◆ §4: Mixed activities
 - ◆ §5 + 6: Sportspersons
- Conclusion: Influencers are entertainers

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HISTORY OF ARTICLE 17 OECD

- Pre 1963
- OECD Draft Model
- Addition of Article 17(2) in 1977
- Dramatic report in 1987
- No deduction of expenses, but gross taxation

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PROBLEMS / DOUBLE TAXATION

- Tax credit method (instead of tax exemption method)
Unequal treatment for employees
- Excessive taxation because of difference in taxable base
- No tax certificate
- Wrong name
- Another language
- Income in residence state is too low / under personal allowance

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OECD DISCUSSION 2010 - 2014

- Discussion about the purpose of Article 17 between 1994 and 2009
Sandler, Grams, Nitikman, Molenaar, Parolini
- Public consultation 2010
- Two reactions: remove Article 17 from OECD Model
- IFA Congress in Rome in 2010
- Bulletin article: 'Red Card Article 17?'
- Discussion within the OECD

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OECD: KEEP ARTICLE 17 (2014)

- Three reasons:
 1. Difficulties for residence state to obtain information about foreign income
 2. High-income earners can easily move residence to low-tax state
 3. Source taxation can be administered relatively easily

But these reasons are wrong

1. Bank payments: easy to obtain information about foreign income (or introduce exemption procedure)
2. Low-tax states don't have tax treaties → no Article 17
3. Source taxation is complicated, risk of double taxation and extra administrative expenses

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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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INFLUENCERS - APPORTIONMENT

- Under Article 17, every state of work should tax its share of the income
- UK: Agassi case
- USA: Gosen and Garcia cases
- Example: Danish influencer sponsored by UK fashion brand, having activities in Spain, Portugal and France
- Source taxation in work states?
- Deduction of expenses?
- Tax credit in Denmark?

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PILLAR I (AND II) / ARTICLE 12B

- No PE required
- Pillar I and II - OECD
 - ◆ Taxation in the work state → allocation of profits
 - ◆ But high threshold
 - ◆ Cooperation between various tax administrations
 - ◆ Elimination of double taxation
 - ◆ Additional tax in residence state (if applicable)
- Article 12B – UN Model
 - ◆ Low tax rate in work state
 - ◆ No threshold
 - ◆ Qualified profits
 - ◆ Elimination of double taxation
- Examples for Article 17 OECD Model?

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CONCLUSIONS

- Influencers are entertainers and fall under Article 17 OECD Model
- Taxation in the work states, no PE required
- Regardless where income comes from → apportionment
- But not for virtual influencers
- Article 17 is problematic and can better be removed
- Three existing reasons for Article 17 are wrong
- Comparison with Pillar I and 12B: same problems and solutions

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CONTACT DETAILS

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