

ARTIST TAXATION SOCIAL SECURITY VAT

Smart at Mobility
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ARTIST TAXATION - INTRODUCTION

- Source state: national tax rules are defensive:
 - ◆ Budget
 - ◆ Against tax avoidance or non-compliance
- Therefore, source taxation for non-residents (*Beschränkte Steuerpflicht*)
- Residence state: taxation of worldwide income (*Unbeschränkte Steuerpflicht*)
- Result: double taxation
- States make bilateral treaties to eliminate this

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RESIDENCE

- National rules
- Art. 4 OECD Model (+ all tax treaties)
- See page 2

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SPECIAL RULES ARTISTES/SPORTSMEN

- Since 1963 in OECD Model: Art. 17 artistes/sportsmen “because of practical difficulties”
- Art. 7 (+ 14) - Companies and self-employed: taxed in country of residence, unless when they have a permanent establishment in country of work
- Art. 15 - Employees: taxed in country of work, unless
 - ◆ Employer is based in residence country
 - ◆ Pays the salary there
 - ◆ Visit in the country of work < 183 days

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TAX EXEMPTION OR CREDIT

- Art. 23 – Elimination of double taxation with tax exemption or credit in the residence country
- Older tax treaties: tax exemption
- Newer treaties: tax credit
- See list on page 12/13

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NO DEDUCTION OF EXPENSES

§ 94 of the 1987 OECD Report

(§ 10 of the OECD Commentary on Art. 17)

“The article says nothing about how the income concerned is to be computed. It is for a Contracting State’s domestic law to determine the extent of any deductions for expenses. Domestic laws differ in this area, and some provide for taxation at source at an appropriate rate based on the gross amount paid to artistes and athletes. Such rules may also apply to income paid to groups or incorporated teams, troupes, etc.”

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PROBLEM OF EXCESSIVE TAXATION

Insufficient tax credit in residence country, because of high withholding tax

Example: 2.000 gross – 1.200 expenses = 800 profit

- Withholding tax: $20\% \times 2.000 = - 400$
- Tax credit: $30\% \times 800 = 240$

Insufficient tax credit = - 160

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PROBLEMS WITH TAX CREDITS

It is often problematic to achieve a tax credit in the country of residence. Examples are:

- No tax certificate available
- Name of group, but credit in name of artists
- Conflict with monthly salary administration
- No acceptance by local tax inspector

This leads to international double taxation

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OPTION: ARTICLE 17(3)

- OECD Commentary on Art. 17 gives the option for a tax exemption at source for:

“events supported from public funds”

- Very often used, e.g. in 49% of Austrian tax treaties
- See lists on page 6 + 12/13

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EUROPEAN UNION (ACHIEVED)

- No direct influence on artiste and sportsman taxation, but indirect through EU Treaty
- Gerritse: ECJ 12 June 2003, C-234/01
- Scorpio: ECJ 3 Oct 2006, C-290/04
- Entitled to deduction of expenses !
- Normal tax rates
- Not yet in every EU country, such as Italy and Portugal
- See list on page 8/9
- But withholding tax is allowed after ECJ 18 Oct 2012, C-498/10 (X NV (= Football club Feyenoord))

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THE NETHERLANDS - 2007

- The government had decided not to tax non-resident artistes and sportsmen from treaty countries anymore
- 93 treaty countries
- Although the NL has the taxing right under Art. 17 of the treaty
- But tax revenue is too low and administrative expense are too high
- Return to normal taxing rights of Art. 7 and 15

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EXEMPTIONS SPORTS EVENTS

- Winter Olympics – Feb 2010 – Vancouver
- Olympics – Aug 2012 – London

- Tax exemption for sportspersons
- The IOC uses this as a condition for the Olympics bid
- Clear sign that Art. 17 OECD is considered an obstacle
- Only effective with tax credit method in residence state
- Double non-taxation if tax exemption method applies

- Also 2011 ICC World Cup Cricket – India / World Cup Rugby – New Zealand
- Champions League Final since 2011
- EURO 2012 – Poland + Ukraine / 2016 - France
- FIFA World Cup 2016 - Brazil

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2014 UPDATE OECD MODEL

- OECD has denied the proposal to delete Article 17

- Options for exemptions and deductions in treaties:
 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
 5. Exemption for teams, troupes and orchestras
 6. Exemption for Art. 17(2), when no participation in profits

- See draft text on page 16

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PRACTICE

- National tax exemption in visiting country?
- If not, tax exemption possible under tax treaty?
- If not, deduction of expenses possible?
- If not, split contract between production and artiste fee?
- Minimum amount for individual artistes?

- If tax is withheld (or paid on top of net fee), ask for tax certificate

- Tax credits in residence country, for which foreign tax should be withheld from fees of individual artistes, because only they can apply for tax credits in their income tax returns

- Eliminate double taxation, also in case of net fees !!

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SOCIAL SECURITY

- EU harmonization through Directives
 - Current Directive: 883/2004

- Art. 11(1): legislation of one single Member State
- Art. 11(3a): Member State of the work. Both for employees and self-employed.

- Art. 12(1): employees for their employer temporarily abroad
- Art. 12(2): self-employed temporarily abroad
 - Maximum 24 months
 - A1 certificate

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NORMALLY IN TWO OR MORE MS

- Art. 13
 - ◆ 1: Employees: substantial part of work (> 25%)
 - ◆ 2. Self-employed: substantial part of work (> 25%)
 - ◆ 3. Employee > self-employed
 - ◆ 4. Civil servant > employee and self-employed

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EUROPEAN COURT OF JUSTICE

- Barry Banks 30 March 2000, C-178/97:
 - ◆ E-101 is valid as long as it has not been withdrawn
 - ◆ Is binding for the MS of the work
 - ◆ Can have retroactive effect

- Commission vs. France 15 June 2006, C-255/04:
Imposing the presumption of salaried status on performing artists who are recognized as service providers in their MS of origine, where they usually provide similar services, is against Art. 49 EU Treaty (Freedom to provide services)

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VAT

- VAT rates in EU Member States for admission to cultural services (Annex III(7) VAT Directive 2006/112/EC)

- Place to supply services:
 - ◆ Art. 44: to a taxable person: country of recipient
 - ◆ Art. 45: to a non taxable person: country of service supplier
 - ◆ Art. 53: admission to cultural and other services: country where event actually takes place
 - ◆ Art. 54: artistic services to non taxable persons: country where activity takes place

- Cultural exemption: Art. 132 (1-n), when recognized
