

International Artist Taxation

IAMA / ABO

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PERFORMANCE INCOME (1963)

Art. 17 OECD Model - Artistes and Sportsmen:
Taxing right for the source country, overruling
other treaty provisions

Measure to counteract:

- tax avoidance
- non-compliance

Art. 23 - Tax exemption or credit in the
residence country

ARTICLE 17(2) - 1977

Addition of a second paragraph to Article 17

Not only payments of performance income to artistes and sportsmen personally, but also to others may be taxed in the country of performance.

1987 OECD REPORT

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

§10 of the OECD Commentary on Art. 17:

“Countries can decide not to allow the deduction of expenses, but to tax the gross performance income. If so, they must use a low tax rate”

Text until 2008 change

LOW TAX RATE (PERFORMANCES)?

| | |
|-------------|---|
| Belgium | 18% |
| France | 15% |
| Spain | 24% |
| Italy | 30% |
| Germany | 15% (from gross), was 21,1% until 2009 15 – 30% (from net) |
| Netherlands | 20% (from net), until 2007 |
| UK | 20% (from net) |
| USA | 30% (from net) |

Rates in most other countries from gross fee !

EXCESSIVE OR DOUBLE TAXATION

The problem is very often whether the tax credit in the residence country is sufficient. Especially because the non-deductibility of expenses in the performance country.

And may even be that the tax credit cannot be obtained because of problems with tax certificates, tax authority in the residence country, salary administration and such.

EUROPEAN LAW

European Court of Justice:

- *Gerritse*: 12 June 2003 (C-234/01)
- *Scorpio*: 3 October 2006 (C-290/04)

AFTER *GERRITSE* AND *SCORPIO*

EU countries cannot use a gross withholding tax system anymore and need to allow normal income tax returns after the taxable year

European Commission is active: Belgium, Spain, Finland, Czech Republic

Some countries have changed: Austria and Germany

OECD has changed §10 Commentary on Art. 17 in 2008 (deduction of expenses / normal tax return)

WITHHOLDING TAX IN EU

After the Scorpio the question remains whether a withholding tax is in line with the EC Treaty

Normal tax return can be sent to artists in their residence country

Tax authorities are obliged to assist with collection of tax because of EU Directive

Court cases in Germany and Netherlands

RADICAL CHANGE

A radical change may be considered:

- Turnaround of Article 17: no source tax for artistes coming from a treaty country
- They pay income tax in their home country
- But source tax remains for artistes from non-treaty countries

Example: The Netherlands as of 1 Jan 2007