TOURING AND TAXATION

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INCOME TAXATION

- Most countries have a withholding tax on money leaving the country
  - Tax revenue
  - Preventing non-taxation when foreigner would not declare income in residence country
- But residence countries will also tax the income, whereever it has been earned (worldwide income)
- Result: double taxation
- Tax treaties have been agreed to eliminate this

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BILATERAL TAX TREATIES (OECD MODEL)

- Article 7 (+ 14) - Companies and self-employed: are taxed in country of residence, unless when they have a permanent establishment in the country of work
- Article 15 - Employees: are taxed in the country of work, unless
  - The employer is based in the residence country
  - The salary is paid in the residence country
  - Less than 183 days in the country of work
- Article 12 – Royalties: only taxation in residence country → exemption in source country

PERFORMANCE INCOME

- Article 17 OECD Model - Artistes and Sportsmen: Taxing right for the source country, overruling other treaty provisions
- Since 1963 in OECD Model: Article 17
  "because of practical difficulties"
- Measure to counteract:
  - tax avoidance
  - non-compliance

Article 23 – Elimination of double taxation with tax exemption or credit in the residence country

ARTICLE 17

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.

NO DEDUCTION OF EXPENSES

- § 10 of the OECD Commentary on Article 17
- Taxation of the gross income, but at a low tax rate
- But some countries allow the deduction of expenses (during or after the year)
- And normal tax returns (after the year) with normal tax rates
- See list of tax rates per country: page 7 of article "Artist Taxation, Social Security and VAT"

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% x 2.000 = - 400
  - Tax credit: 30% x 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 Article 17 gives the option for a tax exemption at source for:

  "events wholly or mainly supported from public funds"

- Very often used in tax treaties
- But > 50% subsidy does not happen often

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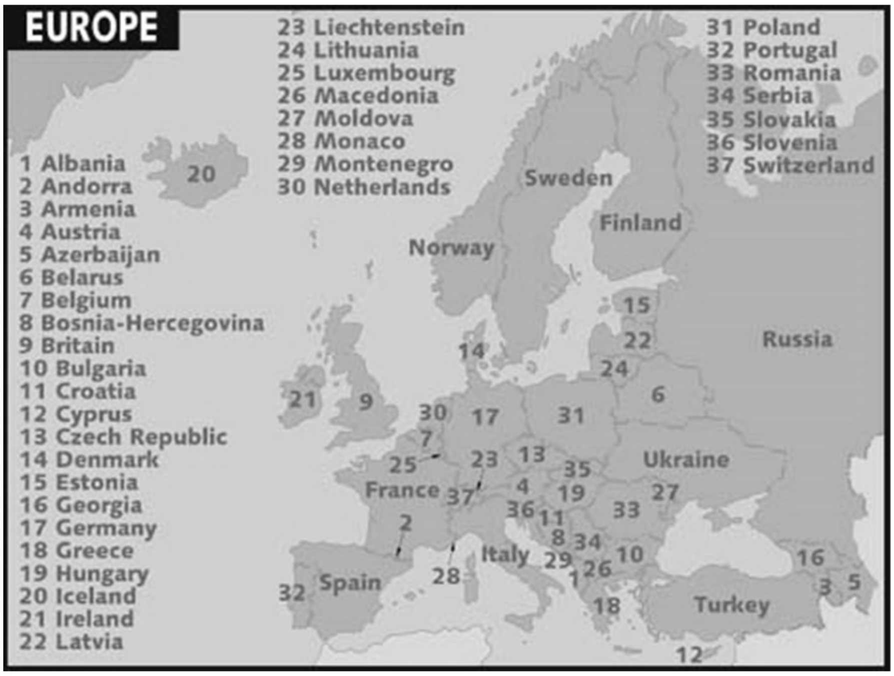

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EUROPEAN UNION

- 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

- But withholding tax is allowed: ECJ 18 Oct 2012, C-498/10 (X NV (= Football club Feyenoord))

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TAX RATES IN VARIOUS COUNTRIES

- See article "Artist Taxation, Social Security and VAT", page 7
  - Tax rates
  - Deduction of expenses
  - Tax return after the year
  - Minimum threshold in US tax treaty

  - A1 needed (social security)

  - VAT rates

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THE NETHERLANDS - 2007

- The government had decided not to tax non-resident artistes and sportsmen from treaty countries anymore
- 99 treaty countries
- Although the NL has the taxing right under Article 17 of the treaty
- But tax revenue is too low and administrative expense are too high

- Return to normal taxing rights of Article 7 and 15

- Also Denmark and Ireland

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
- Foreign tax should be withheld from individual artistes, because only they can apply for tax credits

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

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