ARTIST TAXATION
SOCIAL SECURITY
VAT

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1. Introduction

Artist performances are very often not restricted to the own country, but go across the border. This article gives information about the artist taxation, social security and VAT aspects.

As other persons, also performing artists have to pay income tax, but in which country and how to avoid double taxation? The same when companies are involved, which may be taxable (or exempted) for corporation income tax. There are special tax rules for performing artists and this article will explain how they work, both in the country of work or performance and in the residence country. It will show how the (European) social security rules work when performing in other countries. And finally, the VAT rates on ticket sales and the reverse charge system will be explained.

2. National artist tax rules

Many countries want to tax every income which has been earned by non-residents, because they are anxious that otherwise it may not be taxed anywhere, besides that they want to use the tax earnings for the state's budget. Also for performances from visiting artists, most countries have a source withholding tax in their national legislation. The tax rate is most often lower than normal, such as 10% in Luxembourg, 15% in France, 18% in Belgium, 20% in the UK, 25% in Portugal and 30% in the USA and Italy. See the table at the end of this article with the artist withholding tax rates applying in the EU states and some other countries.
Reason for the lower rates than normal is that basically the tax is calculated from the gross performance fee without deductions for expenses. This will be discussed in paragraph 5.

On the other hand, countries are taxing the income of their residents on a world-wide basis. Not only income earned in the country itself, but also foreign income is taxable in the home country. This means that income from foreign performances will be taxed twice, first in the country of performance and then in the residence country. The result is double taxation.

3. Bilateral tax treaties: Article 17

To eliminate this double taxation, countries have started to conclude bilateral tax treaties, already 100 years ago. Without, cross-border work would be very unprofitable. Tax treaties divided the taxing rights over the two countries.
Most countries accept these tax treaties as stronger than national law, which means that they set aside the national rules for the international agreements. The OECD in Paris coordinates the bilateral tax treaties with a Model Tax Convention (plus Commentary). There are special rules for artists in this Model, in Article 17, which have been taken over in the tax treaties.

The OECD Model has the following relevant articles for the music business:

Article 7	Business profits
Article 12	Royalties
Article 15	Income from employment
Article 17	Entertainers and sportspersons
Article 23	Elimination of double taxation

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- With Article 7, countries agree how the taxing right for business profits (companies and self-employed) will be divided. The main rule is that these profits are only taxable in the country of residence, which means that the source country cannot raise any tax, unless when there is a permanent establishment (PE) in the source country, because then the profits of this PE are also taxable in that other country. A PE normally comes into existence after more than 12 months. An independent agency does not create a PE.

- With Article 12, a separate rule has been created for royalties, allocating the taxing right solely to the residence country of the beneficial owner of the royalties, although it also allows source countries to tax the royalties at a low percentage, such as 5% - 15%. Some countries are using this exception, such as Italy, Japan, Portugal and developing countries.

- With Article 15, income from employment becomes basically taxable in the country of residence, unless when the work is done in the other country. There is a major exception in Art. 15(2) for employees working for their employer in the other country, because then the taxing right remains in the country of the employer, if the work period is < 183 days.

- With Article 17, a special taxing rule has been created for entertainers (and sportspersons), allocating the taxing right to the country of the work, regardless whether as self-employed or employee. Also when the fee is not directly paid to the entertainer of sportsperson but to another person, such as an agent, management or other company.

- With Article 23, double taxed should be eliminated. The residence country will also tax the foreign income as part of the world-wide income, but has to allow a foreign tax credit (or a foreign income exemption) to prevent the double taxation.

4. Performance country: Article 17 for entertainers (and sportspersons)

The special Article 17 for performing artists in the OECD Model makes foreign performances complicated. The article has been taken over in almost every bilateral tax treaty and is meant to counteract tax avoidance behaviour by top artists and sportspersons, who have moved their residence to tax havens such as Monaco. Examples are Andrea Bocelli, Luciano Pavarotti, Boris Becker, Steffi Graf, Tom Boonen and Max Verstappen. Monaco does not have an income tax, but only VAT.
But it is unclear why a tax treaty provision would be needed to tax these top stars, because Monaco does not have tax treaties, so is not affected by an Article 17 in e.g. a tax treaty between Germany and the UK. It would be enough when every country would leave its national withholding tax in place for artists, sportspersons and others with Monaco as their country of residence.
In 2014, the OECD has also given other reasons for Article 17, such as that the residence country has problems with obtaining information about foreign income and the source taxation can easily be administered.

Art. 17 is a catch-all provision, because the country of the performance has the taxing right for any income arising from the performance, regardless to whom it is being paid, the artist himself or another person. This can be an agent, management, a theatre or dance company, orchestra or the personal company of the artist himself.

5. Deduction of expenses

Initially, the deduction of expenses was not recognized in the bilateral tax treaties. Most countries decided to raise a relatively low artist withholding tax rate, which is taken from the gross fee without any deductions. As mentioned in paragraph 2: 10% in Luxembourg, 15% in France, 18% in Belgium, 20% in the UK, 25% in Portugal and 30% in the USA and Italy. At the end of this article, an overview provides the artist withholding tax rates in the EU states and some other countries.
Expenses can be deducted in advance in the UK, the USA and Australia, so that the tax is only raised on the actual profit. The UK has the Foreign Entertainers Unit (FEU), the US the Central Withholding Agreement (CWA) and Australia has the Foreign Resident Withholding Variance (FRWVV). Also income tax returns can be filed after the year to deduct expenses.

But also EU member states were forced to allow the deduction of expenses after the Gerritse and Scorpio decisions of the European Court of Justice (ECJ) in 2003 and 2006. Every EU state had to follow these decisions and change its legislation so that expenses became deductible and tax returns possible. Nowadays, only some states have not reacted and still tax the gross income, such as Portugal and Italy. Unfortunate is that every EU member state has another system for the deduction of expenses and that very often procedures differ per region. It depends on the promoter what is possible in some countries.

Very often separate production companies are used to split off the expenses from the artist fee. Payments to these separate productions should not fall under the artist withholding tax, according to Article 17 OECD Model and the national tax rules. But very often there are percentage limits to production expenses. Also direct invoicing to the promoter in the performance country of agency fees, travel, hotels and other production expenses will lead to a lower taxable artist fee and withholding tax.

Altogether, the deduction of expenses is complicated because it has to be arranged per country and sometimes expenses have to be made to hire tax lawyers for consultancy and applications. Smaller and medium sized artists therefore have problems with arranging the deduction of their expenses.

The overview at the end of this article shows whether countries allow the deduction of expenses before the performance and/or the filing of an income tax return at the end of the year.

6. Residence country: Article 23 for tax credit (or sometimes exemption)

As the residence country wants to tax the world-wide income of the performing artists, it has to allow a tax credit for the tax withheld abroad. This is described in Art. 23 OECD Model (and the bilateral tax treaties). Some countries use the exemption method to eliminate double taxation, such as Belgium.

The tax credit is most often an ordinary tax credit, which means that the foreign tax can be deducted from the tax in the residence country, but only to the amount of tax due on the foreign income. This limitation avoids that the residence country has to give more credit more than what it levies from the foreign income. Some countries allow that excess tax credits are brought forward to the next year.

An example:

- A UK artist has earned € 3.000 in Germany, which was taxed at 15,825% = € 475 German tax.
- In the UK he had to deduct his expenses of € 2.000, which means that his net profit was € 1.000.
- His total UK income was € 40.000, from which he paid € 6.000 UK tax.
- He claimed a foreign tax credit of € 475, but the limit of the ordinary tax credit was € 1.000 / 40.000 = 2,5% x € 6.000 tax = € 150 maximum credit.
- This leaves an excess tax credit of € 150 - 475 = - € 325.
- Without carry forward to the following year, this would be a net loss for the UK artist.

Some countries (such as Belgium) are using the exemption method and then the income is completely taken out of the taxable base. But the result will be the same in the previous example, because the exemption method is the same as the ordinary credit. This means that partial double taxation still very often occurs.

For the tax credit method, tax certificates are needed to prove that tax has been withheld in the foreign country. And these tax certificates have to be in the name of artist who wants to claim the tax credit. The exemption method can be applied without this evidence, but most countries follow the OECD recommendation to use the tax credit method for Article 17.

When expenses can be deducted in the country of the performance, the artist withholding tax will be lower and the risk of double taxation will decrease. But when the artist tax is raised from the gross fee, (partial) double taxation most often occurs.

7. Tax problems and high administrative costs

The special Article 17 for entertainers (and sportspersons) very often leads to tax credit problems. Not only for a small artist, as in the example in the previous paragraph, but also for more established artists. High production expenses, missing tax certificates, the use of personal companies are most often reason for lower tax credits than what has been withheld abroad.

And the options to deduct expenses abroad are most often only accessible when hiring a local accountant or tax adviser. This leads to extra costs, which are often not affordable. Also for obtaining the foreign tax credit in the residence country, the assistance of an expert is needed, which causes extra administrative expenses.

8. Solution: no Article 17

It would be much easier if Article 17 and the artist withholding tax would not exist, but the normal Article 7 (Business profits) or Article 15 (Employment) could be followed. Then the risk of double taxation would disappear ad the administrative expenses would be much lower.

There are best practice examples in Europe:
- Some countries do not have an artist withholding tax in their national tax law, such as Denmark, Hungary, Ireland and the Netherlands.
- Belgium and the Netherlands have not included an Article 17 for entertainers and sportspersons in their new bilateral tax treaty.

9. Alternative: minimum threshold

The tax problems for small and medium sized artists were reason for the USA to insert a minimum threshold in their bilateral tax treaties. In the first US Model Tax Convention of 1996, the minimum was set at $20,000 gross per person per year, which meant that the US tax treaty policy from then onwards was to set the threshold on that level in later tax treaties. This has happened in the treaties with Denmark (2000), the UK (2001), Belgium (2006) and others.

In the latest 2016 US Model Tax Convention, the minimum was raised to $30,000 gross per person per year, which is now the standard for new US tax treaties.

The OECD Model also allows a minimum threshold of € 20.000 p.p. p.y. in its Commentary on Article 17. But this recommendation has rarely been used countries in their tax treaties.

Some countries have minimum thresholds in their national tax law, such as Belgium with € 400 per artist per performance and Germany with € 250 per artist per performance, while the UK applies the yearly general allowance of £ 12.000 profit to non-resident artists.

A minimum threshold can be a good alternative when countries still want to use the artist withholding tax from Article 17 OECD Model, but take away the negative results for the smaller and medium sized artists. But is important then that it can applied directly at the performance and not just after the year in a refund procedure.

The overview at the end of this article shows for every country which threshold has been agreed with the USA. This threshold is per performing artist per year.

10. Social security and A1 certificates

Social security contributions can also be an extra burden for international performing artists. Different from taxation is that social security also creates rights for health insurance, unemployment and disability benefits en old age pensions. The national social security institutes need to get the information about the social security and contributions to be able to grant the benefits, so that they can also grant the benefits on time and in the correct amounts.

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Therefore within the European Union, social security has been harmonized with the EU Regulation 883/2004. This is stating in Article 13 that an EU resident can only fall under the social security of one EU Member State. This normally the state of work, but with work in more than one EU state, the social security of the residence state applies and the other state(s) should allow an exemption.

After the Brexit, the UK has agreed with the EU to remain within the framework of the social security system and the EU Regulation also still applies to UK persons.

This means that international performing artists normally only fall under the social security of their residence state and don't have to pay social security contributions in other countries. The EU has created the A1 certificate to ascertain the applicable state of social security of a person. Every EU state has a social security institute issuing A1 certificates on request for its residents.
Some states also need A1 certificates for the crew of a touring band.

Unfortunately, Germany keeps levying social security contributions (*Künstlersozialversicherung*) from non-resident artists (or their companies) against the EU Regulation 883/2004.

The overview at the end of this article shows whether countries ask for an A1 certificate to be exempted for social security contributions.

11. VAT rates and reverse charge system

VAT is an indirect taxation, which focuses on the expenses of consumers. But they are not paying the tax themselves, but it is levied from the companies selling the goods and services to them. Companies are also charging VAT amongst each other, but this VAT can be deducted as input tax, leading to the result that goods and services are free from VAT until they reach the final consumer.

Across the border, no VAT is charged between companies with the reverse charge system, which means that the VAT is not charged by the company providing the performance, but is declared by the organizer in the country of the performance .

The VAT has been harmonized within the European Union with the VAT Directive 2006/112/EU, after which every EU Member State has to use the same VAT rules. But some aspects are optional, such as the level of the normal VAT rate and the use of optional low VAT rates, such as for cultural services. The normal VAT rate differs between 17% in Luxembourg and 27% in Hungary.
Most EU states are using a low VAT rate for ticket sales for artistic performances and this varies from 3% in Luxembourg to 18% in Hungary.

The overview at the end of this article shows the applicable VAT rates per country (in the two right columns).

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Country	Tax rate	Deduction expenses	Tax return after year	US tax treaty	A1 needed	VAT rate ticket sales	VAT rate normal
European Union							
Austria	20%	Yes	Yes	$20,000	No	13%	20%
Belgium	18%	Yes	Yes	$20,000	No	6%	21%
Bulgaria	10%	Partly	Yes	$15,000	No	20%	20%
Croatia	10%	Partly	Yes	No treaty	No	5%	25%
Cyprus	No	-	-	$5,000	No	5%	19%
Czech Republic	15%	Partly	Yes	$20,000	No	10%	21%
Denmark	No	-	-	$20,000	No	EX	25%
Estonia	10%	Yes	Yes	$20,000	No	20%	20%
Finland	15%	Yes	Yes	$20,000	No	10%	24%
France	15%	No	Yes	$10,000	Yes	5,5%	20%
Germany	15,8%	Yes	Yes	$20,000	No	7%	19%
Greece	20%	Partly	Yes	$10,000	No	6%	24%
Hungary	No	-	-	183 days	No	18%	27%
Ireland	No	-	-	$20,000	No	9%	23%
Italy	30%	No	No	$20,000	No	10%	22%
Latvia	20%	Yes	Yes	$20,000	No	EX	21%
Lithuania	15%	Yes	Yes	$20,000	No	21%	21%
Luxembourg	10%	Partly	No	$10,000	No	3%	17%
Malta	10%	No	No	$20,000	No	5%	18%
Netherlands	No	-	-	$10,000	No	9%	21%
Poland	20%	Partly	Yes	183 days	No	8%	23%
Portugal	25%	Yes	Yes	$10,000	No	13%	23%
Romania	16%	Partly	No	$3,000	No	5%	19%
Slovak Republic	19%	Yes	Yes	$20,000	No	20%	20%
Slovenia	15%	Yes	Yes	$15,000	No	9,5%	22%
Spain	19 / 24%	No	Yes	$10,000	No	10%	21%
Sweden	15%	Partly	No	$6,000	No	6%	25%
Other							
Norway	15%	Partly	No	$3,000	No	EX	25%
Switzerland	10-25%	Partly	Yes	$10,000	No	2,5%	7,7%
UK	20%	Yes	Yes	$20,000	No	20%	20%
Australia	29%	Yes	Yes	$10,000	-	-	-
USA	30%	Yes	Yes	-	-	-	