1. Artists and athletes: not your typical stay at home taxpayer

Artists and athletes are the preeminent example of mobile taxpayers. They often live outside their home country, perform in various jurisdictions or invest assets worldwide. This factsheet puts the spotlight on the Belgian approach to taxation of professional income of artists and athletes[1].

This tax regime does not solely depend on domestic law (often itself impacted by EU case law). Tax treaties will have to be consulted to determine the tax competent state for income of artists and athletes, meaning Belgium or the resident or performance state of an artist or athlete. For international events, one will also need to take a look at ad hoc regulations by international instances (e.g. FIFA/UEFA) and organizing countries.

2. Tax treaties

2.1. General rule

Belgium has a wide double tax treaty network. Most of the tax treaties that Belgium has concluded, apply article 17 of the OECD Model for the taxation of artists and athletes[2]. Under this article, the state in which the activities of a (non-resident) artist or athlete are performed, is allowed to tax the income derived from these activities. Important is of course to verify who can be deemed to be an artist/athlete, which activities are in and out of scope and what the applicable allocation rules are.

Artists are described as persons taking part in performances, spectacles or presentations – with profit motive – to entertain an audience. Athletes pursue material advantages from their sport achievements outside the course of a regular leisure activity. By lack of an explicit legal definition, there is a grey area where case law has arisen in relation to a.o. the capacity of a model presenting clothes during a fashion show.

Only income related to 'personal activities' is in scope of article 17 OECD-model. This means that e.g. income build up during a career will in principle not fall within article 17 OECD-model but in article 18 OECD-Model. Also, article 17 OECD-Model presupposes that there is a close connection between the income and the personal activity. This might be critical for e.g. income out of sponsorship agreements, particularly if the sponsorship income does not relate to performances (in a given state).

Finally, even if income relates to personal activities, it should always be verified which performances are being remunerated. A question that could arise for instance is whether training days should also be included in the allocation method for calculation of exempt and taxable income[3].

[1] According to Court of Appeal case law, income from image rights can qualify as professional income too: Ghent, May 15, 2018.

[2] A few apply only to employees and not to self-empoyed artists and athletes. The DTT with France follows a different approach. Some treaties exclude publicly funded performances.

[3] For recent case law in this respect, see a.o. Ghent March, 27, 2018.

2.2. Anti-Abuse

In order to prevent that artists and athletes avoid (source) tax by interposing an intermediary to receive income related to performance (e.g. a 'rent-a-star company'), the OECD introduced an article 17.2 allowing a 'look-through' treatment. Belgium included this anti-abuse provision in most of its double tax treaty conventions. The Belgian Supreme Court also recently confirmed that, notwithstanding the fact that Belgian in its internal law has a to article 17.2 comparable provision (article 228 §2, 8° ITC), it can only invoke this stipulation if the relevant treaty includes an article 17.2 also.

3. Belgian Internal Law

For Belgian tax resident athletes and artists, taxation will largely follow the regular income tax rules. This means that artists and athletes are subject to tax on worldwide income, taxable to rather high progressive tax rates[4]. Some exceptions apply for young athletes (16,5%) as well as for athletes for whom the sports income is accessory to other professional income only (33%)[5]. Income potentially subject to these lower rates is capped. Often applied, mainly for artists is the favorable regime for royalties (*droits d'auteur*), which however does not apply to professional income[6]. Finally, also prizes and subsidies can be subject to separate (lower) rates.

Income allocated to a foreign state can however be exempt (see higher, article 17 of double tax treaties, which allows for an exemption with progression)[7] or reduced by 50% by way of unilateral relief (if no double tax treaty is in place). The Belgian tax administration provided some additional guidance in Circular Letters.

For Belgian tax non-resident artists and athletes, the tax treatment is largely the same. However, an important distinction is to be made between two categories of artists and athletes:

(a) Non-residents who perform their activities in Belgium during a period of less than 30 days in any given period of 12 months, e.g. U2 playing in Brussels;
(b) Non-residents who exceed that threshold of 30 days, e.g. Romelu Lukaku playing several games for the Belgian national team;

The first category of artists and athletes can in general benefit from a rather favorable 18% withholding tax. This withholding tax is final. Lump-sum cost deduction is allowed for minor costs of transportation and accommodation/small expenses.

The non-resident can opt for a voluntary individual non-resident income tax return, which can be beneficial if the non-resident had to incur significant (deductible) costs in order to obtain the income.

Finally, as already indicated higher, Belgian tax law also entails the look-through rule for payments made to a third person rather than directly to the artist or athlete. Here too, the 18% withholding tax can apply.

* *
*

[4] A favorable wage withholding tax exemption for employers in the sports industry needs to aid attractiveness of the tax system: article 275 (6) ITC '92.
[5] Not further addressed in this factsheet.
[6] A factsheet on this regime will soon be published on our website.
[7] Recent case law of the High Court to be monitored, see High Court, January 25, 2018.