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DISCUSSION ABOUT ART. 17 AT THE 2010 IFA CONGRESS

At the 64th Congress of the International Fiscal Association (IFA) this year in Rome an in-depth discussion has been held about Art. 17 (artistes en sportsmen). Today the congress devoted - together with the OECD - a seminar to this subject. Over the recent years there have been problems with the taxation of international artistes and sportsmen and several authors have written about that. Some of them came to the conclusion that it would be better to abolish the source taxation of Art. 17 and return to the normal allocation rules. This was followed up by the Netherlands in 2007, which decided not tax the Dutch income of non-resident artistes and sportsmen anymore, if they were resident of a country with which the Netherlands has concluded a bilateral tax treaty. Also the IOC has agreed not to have source tax at the Olympics in Beijing (2008), Vancouver (2010) and London (2012). En the UEFA has succeeded in removing the withholding tax from the 2011 Champions League final in London.

Important in the panel of the seminar at the IFA Congress were four top staff members of the OECD, which coordinates the tax treaties. Others in the panel were professors from Australia and Switzerland, a tax lawyer from the USA and a representative of the Dutch Ministry of Finance. With three case studies they showed how problematic Art. 17 can be in practice and that sometimes strange qualification conflicts with other treaty articles occur. This led to the discussion whether Art. 17 would still have to be in the OECD Model Treaty, which had the following outcome:

- The Dutch representative expressed the opinion that he is in favour of removing Art. 17, because it causes many problems and leads to too much administrative work. He illustrated his opinion with David Beckham wearing number 17.
- The four OECD representatives prefer to keep Art. 17, but are willing to make amendments to the article, such as a threshold over which only top artistes and sportsmen will be taxable, and exemptions for groups, teams and especially employees.
- One professor and the tax lawyer like Art. 17, because as advisers they have much work and earnings from it.
- The last professor expressed his doubts about Art. 17, because of the problems with the deduction of expenses, the low tax revenue, de high administrative burden, the problems with tax credits and the special focus on a specific group of taxpayers. And he finds it remarkable that when more money is at stake at big sports events, the source tax is removed.

The seminar was closed with the notice that the 2012 IFA Congress in Boston will again pay attention to Art. 17, which means that the discussion will continue over the coming time.

The IFA Congress shows that Art. 17 is on the move. Five years ago the OECD acted as if nothing was wrong with the article, but now they are in the middle of a discussion. And that is good news for the many artistes, sportsmen and promoters that suffer from this special tax regime.

Dr. Dick Molenaar