

## RED CARD 17?

Seminar E: IFA-OECD Seminar

Chair: Richard Vann, University of Sydney  
(Australia)

### Panellists:

- Jeffrey Owens, OECD
- Andrew Dawson, Chair of WP1 (United Kingdom)
- Mary Bennett, OECD
- Jacques Sasseville, OECD
- Xavier Oberson, University of Geneva (Switzerland)
- Aart Roelofsen, Ministry of Finance (Netherlands)
- Michael G. Pfeifer, Caplin & Drysdale (United States)
- Secretary: Mario Tenore, Maisto e Associati (Italy)

### The Seminar

Part 1 – Current OECD International Tax Activities

Part 2 – Case Studies on Article 17 (Artistes and Sportsmen)

Questionnaire

Part 1

## CURRENT OECD INTERNATIONAL TAX ACTIVITIES

### TRACE Project – Treaty Relief and Compliance Enhancement

- New phase of work ongoing since 2006 to develop streamlined procedures for treaty relief on investment income, coupled with enhanced compliance through robust information reporting and automatic exchange of information
- Discussion drafts in 2009 and 2010 on best practices, documentation recommendations
- Key focus – international harmonisation and workability
- Strong CFA support, coordination with parallel EU work
- Win-win-win for investors, financial intermediaries, governments

### Tax role in financial instability?

- Bias in favour of debt (leverage)?
- Tax and bank capital adequacy?
- Capital gains vs income (risky debt)?
- Tax havens and SPVs?
- Mortgage interest deductibility?
- Arbitrage opportunities from derivatives?

*Tax was not a primary driver of the business model which led to the crisis .....*

*.... But it should be part of the solution*

### The Post Copenhagen Tax Agenda

- A renewed interest in CO<sub>2</sub> Taxes
- Tax implications of Tradable Permits
- Using tax measures to promote environmentally friendly innovation
- Reviewing fossil fuel subsidies

*GREEN AND GROWTH ARE COMPATIBLE*

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### Tax and Development

- Give LDC access to TIEAs/TDA
- Help in implementation of transfer pricing
- Improve transparency of MNEs
- strengthen tax administration, increase state building and governance and reduce aid dependency in long run

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### Moving from Tax Co-operation to Tax Co-ordination between Tax Administrations

- Progress on the "Enhanced Relationship"
- Joint Audits
- Voluntary Compliance Initiatives
- Improving Taxpayer Service
- Putting Tax Compliance into the Boardroom

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### OECD: Limited membership; global reach

- Expanding membership: 25 → 30 → 34
- Expanding partnership with non OECD countries
  - Forum on Tax Administration (OECD; BRICS; Other)
  - Global Forum on Treaties
  - Global reach on tax transparency
  - Bilateral and regional tax centers
- Input into UN Tax Committee & other organisations

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### Key Elements of 2010 Update to OECD Model Tax Convention

- New Article 7
- Collective investment vehicles
- Telecommunications
- Sovereign wealth funds
- Short-term assignments

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### New Article 7 - Background

- Final implementation of 2008 PE Profit Attribution Report
- For use in future treaties
- No change to Article 5 PE threshold

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**New Article 7 – Main Features**

- Stresses functional analysis, application of arm's length principle to dealings
- Clarifies that paragraph 2 applies not only to determine profits that the PE State may tax but also for application of Article 23 double tax relief by the other State

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**New Article 7 – Main Features**

- Clarifies implications of separate and independent enterprise fiction for other Articles:
  - Does not create notional income for purposes of other Articles – i.e. no withholding allowed on notional payments
  - But some States consider that the fiction should not be so restricted

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**New Article 7 – Main Features**

- Eliminates previous prohibition on recognition of internal interest (outside the financial sector) and royalties
- Clarifies and extends the situations where arm's length remuneration for internal service dealings is required

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**New Article 7 – Main Features**

- Introduces new paragraph 3 on double tax relief mechanism, analogue to Article 9(2):
  - Where one State adjusts (and taxes accordingly) the profits attributable to a PE, the other State shall, to the extent necessary to eliminate double taxation, make an appropriate adjustment to the amount of tax charged on those profits

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**New Article 7 – Main Features**

- Deletes paragraphs of 2008 Article 7:
  - Old 7(4) (use of apportionment method)
  - Old 7(5) (no attribution of profits to purchasing function)
  - Old 7(6) (required use of same method year by year)

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**New Article 7 – Implementation**

- 2010 updated version of PE Profit Attribution Report also released – merely conforming changes
- 2008 version of PE Report and Article 7 to remain in publication

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### Collective Investment Vehicles

- New Commentary additions address:
  - Whether CIVs qualify for benefits in their own right
  - Where they do not, procedures that could be adopted to let them claim benefits on behalf of their investors
  - Optional provisions countries could include in future treaties to deal with these issues

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### Telecommunications Transactions

- New Commentary additions address:
  - Article 12 non-royalty treatment of payments for satellite capacity, for indefeasible rights over cables and phone lines and for spectrum licenses, and roaming payments
  - Article 5 non-PE treatment for satellite operators, roaming network providers, lessors of cable capacity

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### Sovereign Wealth Funds

- New additions to Commentary describe:
  - sovereign immunity doctrine,
  - countries' treaty practices regarding sovereign wealth funds and State-owned entities,
  - issues relevant to determining treaty entitlement of sovereign wealth funds

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### Short-term Assignments

- New additions to Commentary:
  - Clarify circumstances relevant to determining whether an individual's remuneration for services performed in a State is paid by, or on behalf of, an employer who is not a resident of that State (a condition of the so-called "short-term assignment" exception of Article 15(2))
  - Several examples

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### Short-term Assignments

- Agreement reached on a single interpretation of Article 15(2) – i.e., States may deny application of Article 15(2) only based on their domestic law meaning of "employment" or in abusive cases
- Both findings must be based on objective criteria
- Commentary lays out potentially relevant factors
- MAP available to resolve disagreements

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### Current Projects on WP1 Agenda

- Permanent establishment definition clarification
- Beneficial owner concept
- Non-discrimination – Phase 2
- Article 17 (Artistes and Sportsmen)
- TRACE (Treaty Relief and Compliance Enhancement) project

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## 2010 Revision to the OECD Transfer Pricing Guidelines

- Comparability and profit methods (revised Chapters I-III)
  - First major revision to Transfer Pricing Guidelines since published in 1995
- Business restructurings (new Chapter IX)

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## Comparability and Profit Methods

- New guidance on the selection of the "most appropriate transfer pricing method to the circumstances of the case"
- New guidance on comparability analysis
- New guidance on how to apply transactional profit methods (TNMM and profit split) in practice

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## Choice of the TP Method

- Update moves away from 1995 TPG's preference for traditional transaction methods (CUP, Resale Price, Cost Plus) over transactional profit methods (TNMM, profit split)
- New emphasis on selecting "the most appropriate method to the circumstances of the case", taking into account especially:
  - Nature of the transaction (functional analysis)
  - Availability and reliability of comparables

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## New Guidance on Comparability

- New Chapter III
- 5 comparability factors are maintained
- Practical guidance, e.g.: typical (non-compulsory) process; choice of the tested party; databases "can be a practical and sometimes cost-effective source of information" but they are not the only one / not compulsory; comparability adjustments; arm's length range; timing issues

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## New Guidance on Use of Profit Methods

- TNMM:
  - Selection and determination of the net profit margin indicator
- Profit split method:
  - Determining the combined profit to be split
  - How to split the combined profit – preference for objective allocation keys

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## Business Restructurings

- Outcome of project begun in 2005 -- new Chapter IX
- Cross-border reallocation of functions, assets and/or risks:
  - Transfer of something of value (e.g. assets) or
  - Termination / substantial renegotiation of existing contractual arrangements
- Effects on allocation of profit potential

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### Business Restructurings

- Four issues covered:
  - Special considerations for risks
  - Arm's length compensation for the restructuring itself
  - Remuneration of post-restructuring controlled transactions
  - Recognition of the actual transactions undertaken

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### Current Projects on WP6 Agenda

- Intangibles (Chapters VI and VIII) -- emerging issues:
  - Definition ("soft intangibles"): marketing intangibles, workforce in place, business opportunities, etc.: Are they intangibles? More importantly, should they be compensated at AL?
  - Legal / economic ownership; right to share in the return of an intangible that is owned by another party
  - Valuation methods
  - Comments invited on scoping by 15 September 2010
- Administrative aspects of transfer pricing
- Increased monitoring activities

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### Want to know more about OECD work?

- Visit the OECD stand
- Look at the CTPA Brochure
- Visit our webpage: [www.oecd.org/taxation](http://www.oecd.org/taxation)
- Sign up for OECD Tax News e-mail alerts through "OECDdirect" in the online services portion of the OECD home page: [www.oecd.org](http://www.oecd.org)

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### Part 2

### CASE STUDIES ON ARTICLE 17

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### Case 1

### THE FOOTBALL PLAYER AND HIS TEAM

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### Why Article 17?

- Increasing significance of international sporting events
  - 2008 China, Switzerland, Austria
  - 2010 Canada, South Africa
  - 2011 New Zealand
  - 2012 UK
  - Grand Prix etc.

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**Why Article 17?**

- What is Article 17?
- Increasing policy issues around services
  - Services PE
  - Technical Fees
  - Telecommunications
- What is policy basis for taxing?
- What are problems in taxing?
- Approach through case studies

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**Case 1 – Football player and team**

- Ron is a football player resident of State R who plays for SOCO, a professional football team established in State T
- Ron is paid an annual salary of 1 000 000 plus various bonuses based on his performance. His contract provides that he must participate in all training sessions and be available to play in all the matches of his club

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**Case 1 – Football player and team**

- Under a separate contract between SOCO and RONCO (a company established in State H and wholly-owned by Ron), SOCO is entitled to use the "image rights" of Ron on a non-exclusive basis
- As part of that agreement, SOCO pays to RONCO an amount roughly equal to Ron's salary
- During the period covered by the contract, SOCO makes very limited use of Ron's image (he appears with all the other players in a few team pictures)

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**Case 1 – Football player and team**

- The league in which SOCO participates includes two teams in State S.
- As a result, SOCO plays 4 of its 40 games in State S during 2010. SOCO is entitled to a share of the ticket sales for each of these matches.

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**Case 1 – Football player and team**

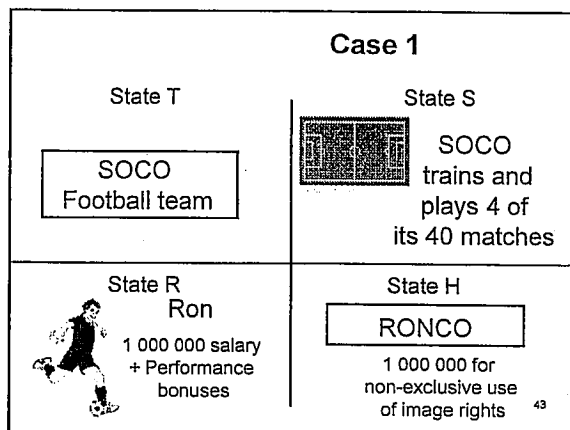
- During the year, Ron is present in State S for 30 working days (out of 200 working days, which include days of travel, training and matches):
  - 18 days of pre-season training not directly related to a match (out of 140 training days)
  - 8 days of travel and training before and after matches played in State S and
  - 4 days when he dresses for the 4 matches played by SOCO in State S (he only plays in one of them; plays in 30 matches in the year)

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**Case 1 – Football player and team**

- All the relevant treaties are generally identical to the OECD Model BUT
- Article 17 of the treaty between States S and T includes the following additional paragraph:
  3. The provisions of paragraphs 1 and 2 shall not apply to the income of:
    - a) an athlete in respect of his activities as an employee of a team which participates in a league with regularly scheduled games in both Contracting States; or
    - b) a team described in subparagraph a).

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### Apportionment (A. Dawson)

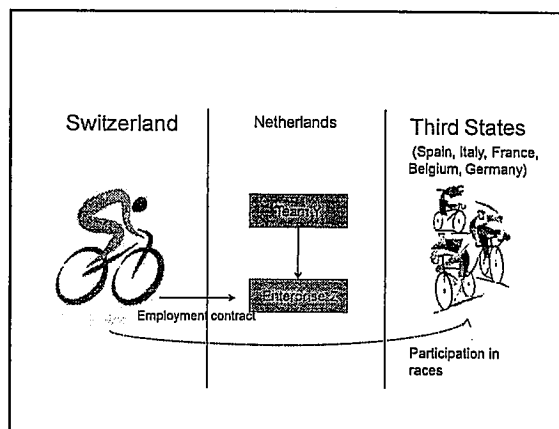
- As State S, UK would tax 30/200 of the salary under general provisions of the tax law that applies to employees
- Would include days of travelling and training, even if not related to a match

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### Nexus (X. Oberson)

- Judgment of May 6, 2008 (« Cyclist Case »), RDAF 2008 II 374 (next slides)
- If Switzerland is State S, it should logically interpret Article 17 as preventing it from taxing any part of the salary

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### X. Oberson

- Under Swiss domestic law, all income received as a professional cyclist are taxable in Switzerland (worldwide income), unless a DTT prohibits Switzerland to do so.
- All DTT with third States (Spain / Italy / France / Belgium / Germany) include a provision similar to Art. 17.(1) OECD Model.
- Art. 17 covers both dependent and independent sportsmen, thus X covered.

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### X. Oberson

- For Art. 17 to apply the payment should directly relate to the performance.
- However, the link between the salary of X and the races is indirect.
- As a consequence, the salary of X doesn't fall under Art. 17.
- Art. 15 (2) OECD Model should apply.
- Accordingly, Switzerland has the right to tax

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**A. Roelofsen**

- Dutch attribution method
- Meant as remuneration for performances abroad, therefore attributable to performance abroad.
- For calculation, include days of:
  - Training
  - Stand-by
  - Traveling
  - Necessary stay
- Related to that performance

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**Triangular case (M. Pfeifer)**

- The special provision in State T - State S treaty:
  - Found in US-Canada treaty; equivalent provision in Australia-New Zealand
  - Does not apply to Ron since Ron is a resident of State R, not of State T (bilateral nature of the treaty)
  - OECD proposals include an alternative provision that would have similar effect (and would also not cover triangular cases)

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**J. Sasseville**

- OECD proposals address the meaning of "activities as such" and sourcing issue:
  - "Preparation and training are parts of the normal activities of an entertainer or sportsman. If the entertainer or sportsman is remunerated for time spent on preparation and training in a State (which would be unusual for self-employed individuals but would be fairly common for employed entertainers and sportsmen), the relevant remuneration, as well as remuneration for time spent travelling in that State for the purposes of performances, preparation or training, would be covered by the Article."

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**J. Sasseville**

- New paragraph 9.2 on sourcing:
  - Entertainers and sportsmen often perform their activities in different States making it necessary to determine which part of their income is derived from activities exercised in each State. Whilst such determination must be based on the facts and circumstances of each case, the following general principles will be relevant for that purpose: ...

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**J. Sasseville**

...employment is exercised where the employee is physically present when performing the activities for which the employment remuneration is paid. Where the remuneration received by an entertainer or sportsman employed by a team, troupe or orchestra covers various activities to be performed during a period of time (e.g. an annual salary covering various activities such as training or rehearsing; travelling with the team, troupe or orchestra; participating in a match or public performance, etc.), it will therefore be appropriate, absent any indication that the remuneration or part thereof should be allocated differently, to allocate that salary or remuneration on the basis of the working days...

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**J. Sasseville**

- Taxation of Ron in State T:
  - Residence of the team in State T does not give additional taxing rights under Article 17 but Article 17 does not restrict Article 15
  - T may tax only employment exercised therein (i.e. working days for training, travel and matches in State T)

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**Bonus (M. Pfeifer)**

- Performance bonuses should be treated like salary unless related to specific events
- US-Canada treaty has a special rule on signing bonus:  
Notwithstanding the provisions of Articles XIV ... and XV ... (Dependent personal services) an amount paid by a resident of a Contracting State to a resident of the other Contracting State as an inducement to sign an agreement relating to the performance of the services of an athlete (other than [salary]) may be taxed in the first-mentioned State, but the tax so charged shall not exceed 15 per cent of the gross amount of such payment.

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**Image rights (A. Dawson)**

- Payments for "Image rights"
  - If disguised remuneration, would treat it as remuneration and tax in accordance with Article 17 (1) or (2)
  - This has attracted a lot of media attention in the United Kingdom earlier this year (although the issue was primarily related to resident players using offshore companies)

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**A. Roelofsen**

- The issue arose in the Netherlands, also in the case of resident players
- We now have case law
- The problem has been addressed by these decisions

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**X. Oberson**

- If the star-company does not have substance, Switzerland would apply the abuse of law doctrine
- Therefore it would ignore the existence of the company and tax a resident player on the income derived from the image right
- In the case of Ron, would likely do the same thing (factual analysis based on the contractual relationship)

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**M. Pfeifer**

- In this case, the payment seems to be disguised remuneration
- What if the organiser of a tennis tournament pays Maria Sharapova for the right to use her picture on posters to advertise tournament in which she plays?
- What if Los Angeles Galaxy paid David Beckham for the right to use his picture on a team calendar?
- What if EA Sports pays David Beckham to use his picture in a video game?

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**M. Pfeifer**

- IRS General Legal Advice Memorandum (2009):  
The incremental value to the player, if any, for granting the sponsor the right to use his or her name and likeness rights on a stand-alone basis apart from those services is de minimis. Accordingly, retainer fees paid pursuant to these contracts should be characterized as income from personal services and, to the extent the fees relate to services performed in the United States, taxed on a net basis at graduated rates...

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**M. Pfeifer**

- GLAM (cont...)

...In the atypical situation in which a player can establish that the sponsor retained the player to use his or her name and likeness rights on a stand-alone basis (for example, to market a signature line of equipment), a portion of the retainer fees may be characterized as royalties and, depending on the facts, may be effectively connected with the conduct of that player's U.S. trade or business

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**Team (M. Bennett)**

- Taxation of SOCO in State S
- Effect of S-T treaty

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**M. Bennett**

- Result under OECD Model?
- Paragraph 11(b) of the Commentary (added in 1992)

The second is the team, troupe, orchestra, etc. which is constituted as a legal entity ...The profit element accruing from a performance to the legal entity would be liable to tax under paragraph 2 [of Article 17].

- Meaning of "profit element"?
- Proposed Commentary

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**M. Bennett**

- Reservation by Canada, Switzerland and the United States
- Limiting Article 17(2) to star companies
- US 2006 Model adds to paragraph 2: "*...unless the contract pursuant to which the personal activities are performed allows that other person to designate the individual who is to perform the personal activities.*"

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**A. Dawson**

- What is the appropriate way of taxing the individual as well as the team?
- Commentary suggests the team can be taxed where it is too hard to allocate team members' remuneration
- But there should be no double taxation

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**X. Oberson**

- If State S were Switzerland and the team was a jazz or a rock band, Switzerland would tax the promoter (who has the domestic tax liability on the payment to the band)
- There is a pending controversy with a somewhat similar reasoning for the organiser of the football match

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### A. Roelofsen

- Definition of artistes and sportspersons includes groups but restricted to performance on basis short term contract
  - Source taxation
  - Organiser is withholding agent
  - Lower rate (20%), gross income
  - Cost declaration

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### A. Roelofsen

- Application problems
  - Which persons are S&A?
  - Which payments attributed to performances
- Credit often not to be realised (→ double taxation)
- Other cases foreigners lower tax than residents
- High administrative costs
- EU problems (*Gerritse, Scorpio*)

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### Going Dutch? (A. Roelofsen)

- Abolished in relation to residents of treaty partners
- We have proposed credit system to our treaty partners who have exemption
- Means practical abolishment of article 17
- Estimate cost tax return of € 5 m

### R. Vann

- Article 17 is messy
- Shouldn't all countries do like the Netherlands?

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### M. Pfeifer

- Question to Netherlands: What about Phil Collins performing a huge concert in the Netherlands?

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### Case 2

## THE BIG INTERNATIONAL TOURNAMENT

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**Case 2 – The big international tournament**

- State S has been awarded the organisation of the 2013 tournament of WIFAA, an international federation established in State R which is the world governing body for a major sport
- 16 teams from various countries will participate in that tournament

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**Case 2 – The big international tournament**

- Local Organising Committee (LOC) and State S have contractually agree that State S would set-up *de facto* tax free-zones around WIFAA designated sites where the tournament will take place (a condition for hosting the tournament)
- In each of these zones, WIFAA and its subsidiaries as well as all the foreign teams will be exempt from all income taxes, customs duties, and VAT

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**Case 2 – The big international tournament**

- In these zones, WIFAA commercial subsidiaries, its licensees, merchandise partners and service providers will be exempt from income taxes on their profits
- It has been agreed, however, that VAT will be paid on tickets sold by LOC (but not on the tickets given to WIFAA)
- Subject to the applicable laws and treaties, all non-resident players will pay tax on salaries and prizes derived from their participation in the tournament, except on the prizes awarded by WIFAA.

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**Case 2 – The big international tournament**

- WIF-TV, the wholly-owned broadcasting subsidiary of WIFAA which is a resident of State R, has sold the rights to broadcast the tournament matches in State S to SCC, a company resident of State S.
- In consideration for these rights, SCC will pay WIF-TV a significant lump-sum amount and will provide, free of charge to WIFAA and LOC, 500 advertising slots for WIFAA events and the tournament.

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**Case 2 – The big international tournament**

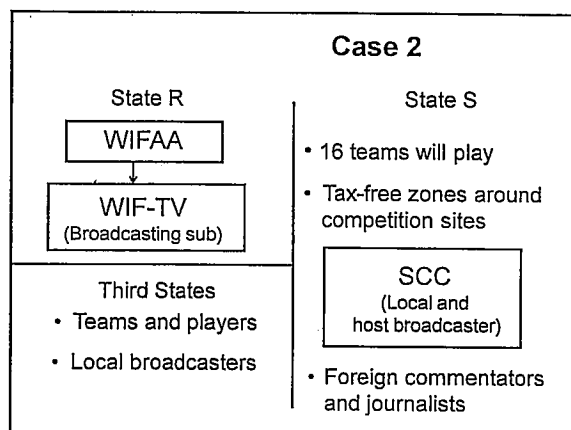
- WIF-TV has entered into similar contracts with broadcasters in a number of different countries; these agreements provide that the live feed for each match of the tournament will be provided by WIF-TV through its host broadcaster.
- Around 50% of the money derived by WIF-TV from the granting of the broadcasting rights will be distributed to the teams that will compete in the tournament and 30% will go to LOC.

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**Case 2 – The big international tournament**

- Each foreign broadcaster that has secured broadcasting rights will send its commentators and journalists to State S for periods ranging from a few weeks to several months.
- These commentators and journalists, who are often former athletes and famous members of teams that did not qualify for the tournament, will travel across the country to broadcast the matches and to provide interviews and reports before and after these matches.

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### WIFAA Exemption (A. Dawson)

- The special tax regime that the UK has introduced for the 2012 Olympics

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### A. Roelofsen

- This issue has generated a public debate in the Netherlands

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### J. Sasseville

- Situation in Brazil and South Africa
- Scope of the exemptions
- Some of the policy issues

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### Broadcasting rights (J. Sasseville)

- Proposed new Commentary on the payment for broadcasting rights:

9.4 Payments for the simultaneous broadcasting of a performance by an entertainer or sportsman made directly to the performer or for his benefit (e.g. a payment made to the star-company of the performer) fall within the scope of Article 17 (see paragraph 18 of the Commentary on Article 12, which also deals with payments for the subsequent sales or public playing of recordings of the performance).

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### J. Sasseville

...Where, however, the payment is made to a third party (e.g. the owner of the broadcasting rights) and that payment does not benefit the performer, the payment is not related to the personal activities of the performer and therefore does not constitute income derived by a person as an entertainer or sportsman from his personal activities as such. For example, where the organiser of a football tournament holds all intellectual property rights in the event and, as such, receives payments for broadcasting rights related to the event, Article 17 does not apply to these payments; similarly, Article 17 will not apply to any share of these payments that will be distributed to the participating teams.

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**J. Sasseville**

... Whether such payments will constitute royalties covered by Article 12 will depend, among other things, on the legal nature of such broadcasting rights, in particular under the relevant copyright law.

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**X. Oberson**

- What about the new observation by Germany in paragraph 15 of the Commentary?

15. Concerning paragraphs 8 and 9, Germany, considering paragraph 18 of the Commentary on Article 12, takes the view that payments made as remuneration for live broadcasting rights of an event are income of the performing or appearing sportspersons or artistes under paragraph 1 of Article 17. This income may be taxed in accordance with paragraph 2 of Article 17 in the case of payments made to any other third party in the context of an economic exploitation of the live broadcasting rights.

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**M. Pfeifer**

- Clearly not Article 17 but could be Article 12
- Is it a royalty?
- Depends on domestic law

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**R. Vann**

- Analysis of the treaty characterization
- Situation in Australia
- Example of the Mexico-Russia treaty (2004):  
The term "royalties" ... and includes payments of any kind as consideration for the reception of, or the right to receive, visual images or sounds, or both, transmitted to the public by satellite or by cable, optic fibre or similar technology, or the use in connection with television broadcasting or radio broadcasting.

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**Entertainer? (A. Dawson)**

- It can be difficult to distinguish a journalist from an entertainer
- The situation of sports commentators is dealt with in the proposed new Commentary:

Merely reporting or commenting on an entertainment or sports event in which the reporter does not himself participate is not an activity of an entertainer or sportsman acting as such.

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**X. Oberson**

- The new proposed commentary makes sense
- For Article 17 to apply the entertainer should act in a performance "as such"

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**A. Roelofsen**

- Comments received from G. West:  
too much focus on type of person and not on the type of income

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**Case 3**

**THE TENNIS PLAYER**

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**Case 3 – The tennis player**

- Renee is a famous tennis player resident of State R
- One of the 20 tournaments in which Renée participates in 2010 takes place in State S (she wins that tournament)

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**Case 3 – The tennis player**

- Under a sponsorship contract with HCO, resident of State T, Renee is paid 600,000 per year for wearing HCO's trade mark and trade name on her tennis shirts during tennis tournaments (including in matches and interviews)
- In addition, bonus payments are made by HCO for each tournament in which she reaches the final


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**Case 3 – The tennis player**

- During a period of 6 months during which Renée recovers from an injury, she derives the following income:
  - 100 000 for a public speech in State S to an audience of 5 000 persons who attend a major conference
  - 50 000 to participate in a televised fashion show, which is recorded in State S but is broadcasted worldwide, in which she models HCO's clothes
  - 50 000 to assist the play-by-play commentator during the broadcast of a tennis tournament in State S

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**Case 3**

|  |   |
|--|---|
| <p style="text-align: center;">State R</p> <p style="text-align: center;">Renee</p>  <p>Contract with HCO: \$\$\$ for wearing HCO's trade mark on her tennis shirts during 20 tournaments + bonus if reaches final</p> | <p style="text-align: center;">State S</p> <ul style="list-style-type: none"> <li>Wins the tournament</li> <li>5% of the stadium sales of tennis shirts wearing her name</li> <li>100 000 for a public speech</li> <li>50 000 to participate in a televised fashion show, recorded in State S in which she models clothes</li> <li>50 000 to assist the play-by-play commentator</li> </ul> |
| <p style="text-align: center;">State H</p> <div style="border: 1px solid black; padding: 5px; width: fit-content; margin: 0 auto;"> <p style="text-align: center;">HCO<br/>(Sponsor)</p> </div>  |   |

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**Apportionment (M. Pfeifer)**

- The proposed changes to the Commentary advocate a source rule based on the number of tournaments (regardless of their relative importance)

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**Wearing patch (A. Dawson)**

- The Agassi case dealt with domestic law and did not question the UK right to tax under the treaty

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**Apportionment (J. Sasseville)**

- The Tax Court of Canada decision in *Sumner*
- Sting, resident of UK, performed concerts in Canada under contract with US company (Roxanne)
- Sting reports \$42,000 Cdn. Income
- Roxanne argues not taxable in Canada because no PE
- How much income of Sting and Roxanne is taxable in Canada?

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**J. Sasseville**

- Decision
  - Sting's income must be allocated on reasonable basis
  - Gross revenue from concerts more reasonable than time
  - Roxanne is taxable in Canada in accordance with Article 17(2)

**X. Oberson**

- The tax treaty treatment of
  - Payment for the public speech
  - Payment for the fashion show
  - Payment as a sport commentator

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**A. Dawson**

- The proposed changes to the Commentary address the issues of the
  - Payment for the public speech: outside Article 17 ("On the other hand, it does not extend to a visiting conference speaker (e.g. a former politician who receives a fee for a speaking engagement...")
  - Payment for the fashion show: outside Article 17? ("...it does not extend ...to a model performing as such (e.g. a model presenting clothes during a fashion show or photo session...")
  - Payment as a sport commentator: outside Article 17

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### Conclusion

- Should we keep Article 17?
- If yes, should it be amended?
- If yes, what changes should be made?

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### Conclusion

- Andrew Dawson
- Mary Bennett
- Xavier Oberson
- Jacques Sasseville

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### DEXTER COMMUNICATIONS (July 2010)

"...Triple Olympic champion Usain Bolt has announced he will not compete at August's Aviva London Grand Prix because of Britain's tax laws. ... The UK's tax laws have proved a handicap to the country's chances of hosting events. Uefa admitted in 2008 that Wembley missed out on the 2010 Champions League final for that very reason. The Government has since agreed to waive the rule so London can host the 2011 final, and competitors in the 2012 Olympics are also exempt."

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### TAX ANALYSTS (July 2010)

"Ghana's Internal Revenue Service on July 13 demanded tax payments of about \$349,000 on the earnings of members of the national soccer team, which competed in the 2010 World Cup in South Africa. The sum reportedly represents 10 percent of the total income the players received while taking part in the tournament."

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### TAX ANALYSTS (July 2010)

"...The 23 Black Stars team members reportedly received \$70,000 each in appearance fees; \$45,000 each in winning bonuses for the three group matches and \$17,000 each at the one-sixteenth stage (the team reached the quarterfinals before being eliminated by Uruguay); and \$20,000 each as a "thank you" gift from Ghanaian President John Evans Atta Mills when they returned to Accra."

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### TAX ANALYSTS (July 2010)

"...Ghanaians remain divided on the subject, with some claiming that because the team creates tremendous national pride and happiness, the players should not be taxed on their winnings. Others claim that everyone must pay tax on their total income, particularly when public workers, who earn far less than members of the national team, are expected to pay tax on all of their income."

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**R. Vann**

- Article 17 and services
- High-value in short time
  - Fairness vs envy / power
  - Revenue?
- Administration
  - Net basis taxation
  - Identification and apportionment
- Taxation of services generally

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