

Tax Exemptions for Euro 2012 in Poland and Ukraine

This note provides an overview of the special tax regimes applicable in Poland and Ukraine in conjunction with the EURO 2012 football tournament, in particular the tax treatment applicable to teams and their players, as well as exemptions for other persons working at the tournament.

1. Introduction

The European Football Championship (EURO 2012) will take place this year in Poland and Ukraine. Both states have never organized the tournament before and are following the example of the Netherlands and Belgium (2000) and Austria and Switzerland (2008), as co-hosts of this major sports event. This article will discuss the tax aspects of the football tournament, with particular regard to the taxation of the football teams and their players. In addition to the special tax treatment of sportsmen, tax exemptions for other people working for EURO 2012 will be discussed.

Since there are two host states with their own tax regimes, it follows that certain differences in regard to both national law and tax treaties will arise. Moreover, Poland is a Member State, whereas Ukraine is still outside the European Union.

The national tax laws of both Poland and Ukraine provide for taxation of non-resident sportsmen performing in these states, which is supported by article 17 of the tax treaties of these two states with the states participating in EURO 2012. However, for this particular tournament, both Poland and Ukraine have inserted unilateral tax exemptions into their national laws, removing source taxation of non-resident football players. Such an exceptional treatment may come as a surprise given that the tournament generates considerable income for football teams and players. While Poland and Ukraine continue to tax income from less profitable sports events and performances, they have given up their taxing right in regard to this major tournament.

2. Participating National Teams/Residence States of Football Players

EURO 2012 starts on 8 June in Warsaw, Poland and ends with the final game on 1 July in Kiev, Ukraine. The following 16 states have qualified for the group stages:

Poland	Ukraine (non-EU)	Croatia (non-EU)	Czech Republic
Denmark	England	France	Germany
Greece	Ireland	Italy	The Netherlands
Portugal	Russia	Spain	Sweden

Players representing a particular state are not always resident in that state for tax purposes. With the competitions in Germany, Italy, Spain and the United Kingdom being the biggest and strongest, it is often the case that players of other nationalities will be active in clubs in these leading states. Such players are tax residents of these states because of everyday training and weekly home (and away) matches in the national league competition. Due to such regular international transfers of football players, moving residence across borders is a widespread football phenomenon.

3. General National Tax Rules in Poland and Ukraine

Both Poland and Ukraine have source tax rules in their domestic laws. Basically, income earned by non-residents in the territory of these states is subject to withholding tax at a rate of 20% in Poland and 30% in Ukraine, both calculated on gross income.

In Poland, the Personal Income Tax Act¹ creates a limited tax liability for non-resident individuals, companies and institutions who receive payments for services in the field of shows, entertainment or sports activities. The withholding agent is the person or legal entity that organizes the artistic, entertainment or sporting event in Poland. The Polish tax is levied in the form of a lump-sum tax at a rate of 20% of gross income.² Following the decisions of the Court of Justice of the European Union (CJEU) in *Gerritse* (Case C-234/01),³ *Scorpio* (Case C-290/04)⁴ and *Centro Equestre* (Case C-345/04)⁵ concerning the deduction of expenses by non-resident artistes and sportsmen, Poland allows non-residents to optionally file regular income tax returns after the end of the tax year.

In Ukraine, the general Ukrainian legislation on personal income tax does not contain special regulations for foreign sportsmen, who are treated like other non-residents and are subject to tax exclusively with regard to their Ukrainian-source income. Income sourced in Ukraine is

1. PL: Personal Income Tax Act 1991, art. (1)(2).
2. Id.
3. DE: ECJ, 12 June 2003, Case C-234/01, *Arnoud Gerritse v. Finanzamt Neukölln-Nord*, ECJ Case Law IBFD.
4. DE: ECJ, 3 Oct. 2006, Case C-290/04, *FKP Scorpio Konzertproduktionen GmbH v. Finanzamt Hamburg-Eimsbüttel*, ECJ Case Law IBFD.
5. DE: ECJ, 15 Feb. 2007, Case C-345/04, *Centro Equestre da Leziria Grande Lda v. Bundesamt für Finanzen*, ECJ Case Law IBFD.

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defined as income from any activities carried on within the territory of Ukraine, including, inter alia, remuneration paid with respect to employment in Ukraine, regardless of whether or not the employer is a Ukrainian resident.⁶ In the light of the above regulations, income of foreign players participating in a tournament in Ukraine, such as winnings and part of the remuneration or bonuses attributable to activities exercised in that country, qualifies as income sourced in Ukraine and may be taxed at a rate of 30%. The tax is generally levied on gross income because non-resident individuals are not eligible for certain exemptions or deductions available to residents for personal income tax purposes.

4. Taxation of Sportsmen under Article 17

Football players fall under article 17 of the OECD Model (2010),⁷ the special clause applicable to international artistes and sportsmen. When states include article 17 in their bilateral tax treaties, they have the right to levy a withholding tax on the performance fees of non-resident sportsmen (and artistes) even if they are self-employed, their fees are business income and they do not have a permanent establishment (PE) in the state of performance. According to the OECD, such taxation at source, which deviates from article 7 (business profits) and article 15 (employment income) of the OECD Model (2010), is a reasonable measure to ensure that every artiste and sportsman pays a share of his earnings to the government. Due to the fact that article 17 of the OECD Model has been adopted in the UN Model Tax Convention,⁸ many non-OECD Member countries apply this regime, both in their tax treaties and in their national legislation.

When article 17 was introduced into the 1963 OECD Model,⁹ it was argued that, with the introduction of article 17, “practical difficulties are avoided which often arise in taxing public entertainers and athletes performing abroad”. The 1987 OECD Report¹⁰ noted that article 17 was meant to “counteract tax avoidance behaviour and non-compliance”. In 1977, a second paragraph was added to article 17, which provided that payments to persons other than the artistes and sportsmen themselves could be taxed by the state of performance.

Since sportsmen (and artistes) must also report their foreign income in their residence state, double taxation may occur. It may, however, be eliminated in the state of residence by either exempting the foreign income from tax or granting the sportsman (or artiste) a foreign tax credit. The OECD Model (2010) recommends the use of the ordinary tax credit provided for in article 23B of the

OECD Model,¹¹ but the tax exemption method is also still used, mainly in older tax treaties and by states that adopt a territorial basis for taxation.

It appears that these special taxing rules balance the taxation of performance income of artistes and sportsmen, i.e. by giving the state of performance the right to tax the income, while reserving a secondary taxing right plus progression for the state of residence. Article 17 seems to establish a reasonable allocation of taxing rights, although this regime differs from the normal allocation rules of articles 7 and 15 of the OECD Model.

5. Obstacles Following from Article 17 of the OECD Model

Unfortunately, the special taxing rules under article 17 of the OECD Model (2010) raise potential practical issues, which can be divided into three groups:

- (1) The non-deductibility of expenses can easily lead to excessive taxation, because the taxable income in the country of performance will be much higher than in the residence country. Such discrepancies in taxable income are often higher than the differences in the tax rates between the two countries;
- (2) Tax credit problems may arise in the country of residence, creating the risk of double taxation. For example, tax certificates may not be available, may be in the name of the group (rather than the individual sportsmen) or in an unreadable language. Also, social security contributions or other levies may be deducted, for which no credit is granted; and
- (3) High fees for professional advice are incurred by artistes and sportsmen, the promoters of the performances and the tax authorities, both in the country of performance and in the country of residence.

The tax literature demonstrates that these problems frequently occur, especially because sportsmen and artistes are mobile and often undertake tours through various countries with appearances in only one location per country. It is not only the sportsmen and artistes who face an obstacle to cross-border activities as a result of special international taxing rules following from article 17 of the OECD Model (2010), but also the promoters of the performances.¹²

6. Income Earned from EURO 2012

The format of EURO 2012 comprises two different phases, one qualifying round across Europe in a home and away match format and one final UEFA EURO tournament that is held in one or two countries selected by UEFA to host

6. S. Melnyk, *Taxation of Foreign Footballers in Ukraine: Is One Match Sufficient to Tax?*, IFA Ukraine International Tax Bulletin 2(5), p. 2 (June 2010).

7. *OECD Model Tax Convention on Income and on Capital* art. 17 (22 July 2010), Models IBFD.

8. *UN Model Tax Convention on Income and Capital* (1 Jan. 1980), Models IBFD.

9. *OECD Model Tax Convention on Income and on Capital* (30 July 1963), Models IBFD.

10. OECD, *Taxation of Entertainers, Artistes and Sportsmen. Issues in International Taxation*, No. 2 (1987).

11. *OECD Model Tax Convention on Income and on Capital: Commentary on Article 17* para. 12 (22 July 2010), Models IBFD.

12. See, for example, D. Molenaar, *Obstacles for International Performing Artistes*, 42 Eur. Taxn. 4, pp. 149-154 (2002), Journals IBFD; D. Molenaar & H. Grams, *Rent-A-Star – The Purpose of Art. 17(2) of the OECD Model*, 56 Bull. Intl. Fiscal Documentation 10, pp. 500-509 (2002), Journals IBFD and D. Molenaar, *The Illusions of International Artiste and Sportsman Taxation*, in *A Tax Globalist – Essays in Honour of Maarten J. Ellis* pp. 90-104 (H. van Arendonk, F. Engelen & S. Jansen eds., IBFD 2005), Online Books IBFD.

the tournament. Out of its own revenues from the fees paid by commercial partners for broadcasting and sponsorship rights, UEFA makes the following payments to the participating National Associations (NA(s)):

- a fixed participation fee to each participating NA paid in advance of the tournament; and
- a performance fee depending on the sporting performance of each national team in the tournament paid after the tournament.

Before or after the tournament, each NA, at its sole discretion, negotiates and distributes premiums to players of its national team, either directly or through its clubs.¹³ Despite the fact that direct payments to clubs or players are not made by UEFA and NAs have no obligation to either forward or allocate any money received from UEFA to players, any premiums effectively received by teams or individual sportsmen are caught by article 17 of the OECD Model (2010). In the light of article 17(2) it is irrelevant that the revenues distributed to NAs are not linked to the performance of the individual sportsman but to the collective performance of the team.¹⁴

Under its regulations, UEFA requires football clubs to release their players for the national team competitions at no cost, including for the EURO 2012. However, the players remain employees of the clubs during the period of their involvement in the national team. Pursuant to article 17, the host countries of the tournament have the right to tax an appropriate portion of employment income of the players, attributable to performances in EURO 2012. The same applies to any business income earned by the players in connection with the tournament.

7. Football's Attempt To Circumvent Article 17

The treatment of income earned from participating in EURO 2012 is inconsistent and differs from host country to country. For example, Belgium and the Netherlands, hosting the tournament in 2000, were not prepared to offer a full tax exemption for the participants. Although Portugal decided to grant a privileged treatment for non-resident players participating in EURO 2004, Switzerland and Austria refused any benefits for sportsmen in 2008. However, on numerous occasions, UEFA has successfully excluded taxation under article 17 in regard to its competitions. In the elimination phase of both the Champions League and Europe League, every club keeps its own box office earnings from home matches and does not pay anything to the visiting foreign clubs. Therefore, in the case of these UEFA competitions, there is no taxable foreign performance income under article 17 of the OECD Model (2010) for the participating football clubs. Furthermore, the revenue collected by UEFA¹⁵ from TV rights and sponsoring, a portion of which is paid to the participating clubs based on their results and size of their home state,

normally falls under article 12 of the OECD Model (2010), which allocates the taxing right to the residence state. As a result, as far as the regular Champions League and Europe League competitions are concerned, there is no risk of excessive or double taxation in respect of income from home and away matches.

The situation looks different in regard to the Champions League and Europe League finals, which are played in one match in a country chosen by UEFA. The box office earnings from these finals are shared by the two clubs and UEFA, which means that the state of the final can levy a withholding tax if the finalists are non-resident. In 2011, the Champions League final was held at the Wembley stadium in London and the Europe League final took place in the Dublin Arena. However, due to pressure from UEFA, the United Kingdom had given up its withholding tax with regard to the Champions League final. This means that, although the United Kingdom normally levies a 20% withholding tax, subject to the right to deduct expenses at source and an optional income tax settlement at the end of the year, the teams participating in the Champions League final received their gross fees free from any deduction and paid taxes in their residence state.¹⁶ Ireland did not levy any tax with regard to the Europe League final 2011, as there is no domestic withholding tax provision applicable to non-resident sportsmen.

The 2012 Champions League final in Munich is also exempted from source tax, although Germany normally levies a 15% income tax (*Einkommensteuer*)¹⁷ + a 0.875% solidarity tax (*Solidaritätszuschlag*)¹⁸ = 15.875% tax on payments for German performances to non-resident sportsmen, which is supported by article 17 of the German tax treaties. Despite the insistence of the German government, for many years, to impose gross taxation, which they had to change after the *Gerritse* and *Scorpio* decisions of the CJEU,¹⁹ Germany now unilaterally has given up its taxing right completely for the football teams and players of the 2012 Champions League final in Munich.

Whether or not the 2012 Europe League final in Bucharest is also exempted from Romanian withholding tax is unclear. No official information is available, which means that Romania will likely levy the normal 16% Romanian withholding tax from the fees of the two teams in the final. However, Romanian insiders expect that the Romanian government will informally grant a tax exemption to UEFA to get the 2012 EL final to Bucharest.

8. Poland and Ukraine's Tax Treaties

Over the last 20 years, Poland and Ukraine have rapidly developed a tax treaty network with many other states. To date, Poland is a party to over 80 tax treaties based on the OECD Model and Ukraine has 65 tax treaties in

13. S. Rychen, *Taxation of Premiums to Football Players at the UEFA European Football Championship: A Continuing Evolution*, in *International Taxation of Artistes & Sportsmen*, p. 262 (X. Oberson ed., Geneva-Zurich-Bale 2009).

14. K. Tetlak, *Tax Treatment of Team Performances under Art. 17 of the OECD Model Convention*, 2 *World Tax J.* 3, p. 262 (2010), *Journals IBFD*.

15. UEFA is based in Lausanne, Switzerland.

16. The United Kingdom for Manchester United and Spain for FC Barcelona. DE: Income Tax Act (*Einkommensteuergesetz*), art. 50a, National Legislation IBFD.

18. Id. The solidarity tax is an extra levy of 5.5% of the income tax, which is meant to finance the extra costs of the 1990 reunion of former East Germany with the bigger and wealthier West Germany.

19. *Supra* n. 4 and n. 5.

force, five of which were concluded by the Soviet Union and are still applied by Ukraine as a legal successor of the USSR. Both Poland and Ukraine have tax treaties with every state participating in EURO 2012 (and with other European states in which players of national teams may have their residence).

As a rule, Polish and Ukrainian tax treaties contain articles 7 and 14 of the OECD Model (2010) for companies and self-employed persons and article 15 for employees, alongside article 17(1) and (2) for artistes and sportsmen. The latter provisions constitute an exception to articles 7, 14 and 15. What is remarkable is that almost all Polish and Ukrainian tax treaties include the optional exception of article 17(3) for subsidized artistes and sportsmen.²⁰ Under this provision, suggested in paragraph 14 of the Commentary on Article 17 of the OECD Model (2010),²¹ income from performances wholly or mainly subsidized by public funds from the country of residence is exempt in the state of performance. In some Polish and Ukrainian treaties the exception of article 17(3) also covers income from performances sponsored by non-profit organizations or forming part of a cultural exchange or agreement. However, despite the fact that UEFA is a not-for-profit organization, it seems very unlikely that the EURO tournament, involving national football teams with commercial earnings, would qualify for this exception. As a result, in respect of income earned from sports performances during the EURO 2012 within their territories, Poland and Ukraine have retained full taxing rights under article 17(1) and (2).

Article 12, applicable to royalties, which covers certain items of income earned by international sportsmen, is also included in every tax treaty, although it diverges from the OECD Model (2010) to some extent. To secure source taxation of royalties arising in their territories and paid out to non-residents, in most treaties, Poland and Ukraine have inserted the right to levy a small withholding tax, which ranges from 5 to 10%.

Both Poland and Ukraine use the exemption method to eliminate double taxation for active income covered by articles 7, 14 and 15 of the OECD Model (2010) and the credit method for passive income under article 12. For article 17, the states follow a different route that deviates from the recommendation by the OECD to use the tax credit method.²² What is remarkable is that Poland has inserted the tax exemption method for article 17 income in the Poland-Spain Income and Capital Tax Treaty,²³ while in the Ukraine-Spain income Tax Treaty, it is left to the national law of the residence state to eliminate

double taxation,²⁴ which is the ordinary tax credit method for Spain.²⁵

9. Obligations towards UEFA Accepted by the Host Countries (Poland and Ukraine)

In the bidding process for the tournament, UEFA required government guarantees from Poland and Ukraine regarding, inter alia, certain tax exemptions. Guarantee No. 11 provides that, in accordance with the legal systems of Poland and Ukraine, and EU law, the governments would issue regulations pursuant to which:

- (a) Designated Persons (other than those who would be resident in the host Country regardless of their involvement in UEFA EURO 2012) will not be subject to taxation in the host Country on payments made to them in connection with the work or services they perform in the host Country or elsewhere in connection with UEFA EURO 2012 (including, without limitation, salaries, reimbursement of expenses and daily allowances);
- (b) UEFA will not be subject to direct taxation in Poland on any of its income, revenues, capital or to any corporation or other similar tax as a result of the staging of UEFA EURO 2012 and its operations in connection therewith including, in particular, on consideration (whether cash or value-in-kind) to be paid to UEFA in connection with the sale of the marketing rights, media rights and other commercial rights relating to UEFA EURO 2012;
- (c) Local Organizing Company, regardless of whether it will have an office in Poland, will be covered by a desist from tax on income, corporate income tax or other similar taxes in Poland and its income will not be subject to any off-sets or reductions in the Host Country or any considerations in kind received or to be received by UEFA, which will be forwarded or received by the Local Organizing Company will not be subject to tax;
- (d) Dividends, service fees, royalties, distributions on winding-up and other distributions made by the Event Company to UEFA will not be subject to any direct tax, withholding or other deductions in Poland; and
- (e) The host Country will take steps to facilitate VAT or similar tax refunds for UEFA, the Event Company and other designated persons, within the framework of EU-VAT directives.

At a later stage, an additional Guarantee No. 21 confirmed that Poland and Ukraine would introduce appropriate legislation to duly implement the tax exemptions. To fulfil the guarantees granted by their governments, both countries had to bring their legislation in line with UEFA expectations.

10. Unilateral Tax Measures Adopted by Poland and Ukraine

Since the existing general legislation provided for a withholding tax on income earned by foreign sportsmen, Ukraine needed to amend its Tax Code.²⁶ Under the special tax regime for EURO 2012, payments for work or services performed in or out of the territory of Ukraine

20. See D. Molenaar & H. Grams, *Art. 17(3) for Artistes and Sportsmen: Much More than an Exception*, 40 *Intertax* 4, pp. 270-278 (2012). Article 17(3) is included in 91% of the Polish and 92% of the Ukrainian tax treaties.

21. Para. 14 *OECD Model: Commentary on Article 17* (2010).

22. Para. 12 *OECD Model: Commentary on Article 17* (2010).

23. *Convention between the Government of Spain and the Government of the Polish People's Republic for the Avoidance of Double Taxation with Respect to Taxes on Income and on Capital*, art. 23 (15 Nov. 1979), *Treaties IBFD* [hereinafter *Spain-Pol. Income and Capital Tax Treaty*].

24. *Convention between the Government of Spain and the Union of Soviet Socialist Republics for the Avoidance of Double Taxation with Respect to Taxes on Income and on Capital*, art. 16 (1 Mar. 1985), *Treaties IBFD* [hereinafter *Spain-U.S.S.R. Income and Capital Tax Treaty*].

25. ES: *Income Tax Law* (Law 35/2006), art. 80, *National Legislation IBFD*.

26. UA: *Tax Code 2010*, as amended by Statute No. 3292-VI (3292-17) from 21 Apr. 2011, *National Legislation IBFD*.

during the organization and hosting of the final part of EURO 2012 in Ukraine are not subject to personal income tax, in particular salaries, reimbursement of expenses and daily allowances for the following individuals (except Ukrainian residents): representatives or officials of UEFA member associations, members of delegations participating in the tournament, including members of teams that qualify for the tournament, and individuals accredited by UEFA.²⁷ The exemption has no time limitations. Ukraine-source income earned by other non-residents during the organization and hosting of the championship is subject to tax under the general rules, subject to the provisions of the tax treaties concluded by Ukraine.²⁸ An appropriate tax exemption has also been offered to UEFA, including with respect to income from the sale of commercial rights. Because, contrary to Poland, Ukraine is not bound by EU laws on value added tax (VAT), in regard to EURO 2012, Ukraine has introduced an exemption from VAT on transactions regarding sales of tickets and services integral to the tickets. The exemption only applies until 1 September 2012.

Poland decided not to grant a tax exemption by amending the Personal Income Tax Act and introducing appropriate regulations in the form of a statute. Instead, the Minister of Finance used the possibility to temporarily desist from levying tax due under the general rules. Such competence is provided for by article 22(1)(1) of the Tax Ordinance Act 1997,²⁹ under which the Minister of Finance may, by way of a decree, in cases justified by public interest or an important interest of taxpayers, (1) desist from collecting tax in whole or in part, (2) determine the kind of tax the desist order applies to, (3) determine the period in which the desist applies, and (4) determine the groups of taxpayers covered by the desist order. The Minister of Finance issued a decree implementing the obligation undertaken towards UEFA and ordered a waiver of the right to levy corporate and individual income taxes with respect to specific taxpayers.³⁰ The waiver applies to income earned by UEFA and entities incorporated under the laws of Switzerland, of which UEFA is the sole shareholder, in connection with the organization of the final tournament of EURO 2012,³¹ and to income earned by individuals who are not Polish tax residents directly prior to arriving in Poland for the purpose of organizing the EURO 2012 tournament or employment or performance of services in connection with the tournament, delegated by UEFA and its subsidiary entities, for the purpose of organizing the EURO 2012 tournament, or accredited by UEFA. With respect to delegated individuals, the desist order applies exclusively to income earned from the performance of activities connected with the organization of the tournament. Accredited individuals are covered by the desist order in respect of income earned from employ-

ment or the performance of services in connection with the EURO 2012 tournament.³²

For UEFA, its subsidiaries and individuals delegated by these entities, the desist order applies from 1 January 2010 to 31 December 2012. For individuals accredited by UEFA, such as tournament personnel, sponsors' staff, journalists, etc., the waiver covers the period of 1 January 2012 to 31 December 2012.³³ These regulations do not refer directly to sportsmen and, therefore, it was doubtful whether or not "individuals employed or performing services in connection with the tournament" would cover players participating in the championship. This doubt was clarified in the explanation to the decree, which states that persons accredited by UEFA include:³⁴

[...] such categories of individuals, without whom the tournament could not take place, such as football players, referees, coaches, members of the medical staff of teams participating in the tournament. The desist will apply to individuals who will arrive in the territory in Poland exclusively for the purpose of employment or performance of services in connection with the tournament.

Polish tax residents are not covered by the discussed special tax regime. The status of a resident or non-resident is determined at the moment of arrival in the territory of Poland for the purpose of employment or performance of services in connection with the tournament.

The income of sportsmen covered by the decree includes exclusively income earned from employment or performance of services in connection with EURO 2012. The decisive criterion for tax waiver is, therefore, the link between the income and the sports event, and the type of income. The wording of the provisions of the decree suggests that it does not apply to passive income, such as interest and royalties.³⁵

11. Comparison of National Exemptions and the Effect of Tax Treaty Provisions

Using different legislative means, Poland and Ukraine have reached the same goal expected by UEFA and offered tax-free participation in EURO 2012 for non-resident players, non-performing members of national teams, individuals working on the organization of the tournament and UEFA itself. In both countries, residents involved in the organization and staging of the championship, as well as football players, will pay regular income taxes. What is interesting is that the special tax regime is, in fact, mostly beneficial to sportsmen, because other non-residents, such as non-performing team members, officials and delegates, journalists, etc. would, in any event, escape source taxation under articles 7, 14 or 15 of the tax treaties concluded by the host countries.³⁶ The relatively short duration of the tournament prevents the taxpayers from meeting the sub-

27. Sec. 1(3) part 1 chapter XX TC.

28. Sec. 5(3) part 1 chapter XX TC.

29. PL: Tax Ordinance Act 1997, art. 22(1)(1).

30. The Decree of the Minister of Finance of 28 February 2011 regarding desisting in the collection of income tax on certain types of income (revenues) of taxpayers in regard to corporate income tax and personal income tax (Dz. U. No. 52, item 267) (Decree 2011).

31. Sec. 1(1) Decree 2011.

32. Sec. 1(2) Decree 2011.

33. Sec. 2 Decree 2011.

34. Explanation to the Decree 2011 project, available at http://www.mf.gov.pl/_files/_bip/bip_projekty_aktow_prawnych/pl/uzasadnienie.pdf?PortalMF.

35. K. Tetlak, *Tax regime for UEFA EURO 2012*, Global Sports Law and Taxation Reports 1, p. 8 (March 2012).

36. K. Tetlak, *supra* n. 14.

stantial presence tests (permanent establishment or place of activity under articles 7 and 14 and 183-days rule under article 15). The exemptions for persons other than the players are generally in line with articles 7, 12 or 15 of the tax treaties concluded by Poland and Ukraine.

The total tax result for particular taxpayers depends on the applicable method of elimination of double taxation and national tax rules in the country of residence. Taxpayers who are tax exempt in their country of residence, such as UEFA, will enjoy tax-free treatment of their tournament-related income. Double non-taxation will also arise for football players in cases where the applicable tax treaty provides for the exemption method. As already mentioned, the Poland-Spain Income and Capital Tax Treaty and the Ukraine-Spain Income and Capital Tax Treaty contain article 17 for artistes and sportsmen, but follow a different route for the elimination of double taxation. Poland has inserted the tax exemption (with progression) method for article 17 income in its tax treaty with Spain,³⁷ while Ukraine leaves it to the national law of the residence state to eliminate double taxation,³⁸ which is the ordinary

tax credit method for Spain.³⁹ The exemption under the treaty with Poland gives Spanish players a considerable tax advantage. Since Spain plays its group matches in Gdansk, Poland, any income attributable to such matches will escape tax in both Poland and Spain. If Spain reaches the quarter final, they will play in Ukraine, but after that, one of the semi-finals will take place in Poland again. The final itself does not offer any tax incentive for the Spanish players because it will be held in the Olympiastadion in Kiev, Ukraine.

The other participating states have implemented the tax credit method in their treaties with Poland and Ukraine. Thus, football players resident in states other than Spain will have to pay full domestic income taxes on their tournament-related income and no foreign tax will be available to set-off the tax in the residence state. None of the treaties concluded by Poland and Ukraine with participating countries provide for a tax sparing credit. If there were such a provision, the residence state would have to grant a tax credit for a hypothetical foreign tax that would have been paid if the special tax regime for EURO 2012 had not been adopted.

12. Summary and Conclusions

At first glance, it looks as if the tax exemption for EURO 2012 offered by Poland and Ukraine ensures a beneficial treatment for everyone involved in the organization of, staging of and participation in the tournament. However, in practice, the tax exemption merely equates the situation of taxpayers covered by articles 7 and 14 (self-employed and companies) and 15 (employees) of the Poland and Ukraine tax treaties, in which the taxing right is allocated to the residence state, to that of sportsmen covered by article 17 who would otherwise be taxable at source. In other words, the tax exemption at source is mostly profitable for the football players of the participating national teams because normally article 17 of the tax treaties concluded by Poland and Ukraine would allow the source state to tax the performance income. UEFA understands that article 17 very often creates obstacles, such as (1) the (non-)deductibility of expenses in the source state, (2) tax credit problems in the residence state and (3) high administrative expenses at both ends. Therefore, UEFA prefers to stay away from source taxation of income from football matches and leave the full taxing right to the country of residence. Such an approach has already been applied for years in the elimination rounds of the Champions League and Europe League and

is demanded by UEFA for the one-match finals of these two tournaments. Now, the EURO 2012 football championship in Poland and Ukraine is also exempted from source tax.

The approach of exclusive residence taxation works only if the tax treaty between the host country and the residence state of the football players (or other sportsmen) provides for the tax credit method to eliminate double taxation. In such circumstances, the residence state taxes the foreign tournament income and no foreign tax has to be credited. However, if the tax exemption method is included in the tax treaty, as is the case for EURO 2012 in the Spain-Poland Income and Capital Tax Treaty, the result, due to the unilateral exemption at source, is double non-taxation for the football players (or other sportsmen).

The special tax exemption demanded by UEFA for EURO 2012 has, to some extent, solved certain problems caused by article 17 of the OECD Model (2010). Such a result is very positive and has influenced discussions at the OECD level concerning article 17.⁴⁰ However, the special regime for EURO 2012 puts participating players in a favourable position in comparison to sportsmen participating in other, minor, sports competitions, for which Poland and Ukraine have not granted any source tax exemption.

37. Art. 23 *Spain-Pol. Income and Capital Tax Treaty*.

38. Art. 16 *Spain-U.S.S.R. Income and Capital Tax Treaty*.

39. Art. 80 Spanish ITA.

40. See D. Molenaar, M. Tenore & R. Vann, *Red Card Article 17?*, 66 *Bull. Intl. Taxn.* 3 (2012), pp. 127-137. This article summarizes the discussion of Seminar E (*IFA/OECD: Red Card Art. 17?*) of the 2010 IFA Congress in Rome and recent developments around artiste and sportsman taxation.