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A Tax Globalist *Essays in honour of Maarten J. Ellis*

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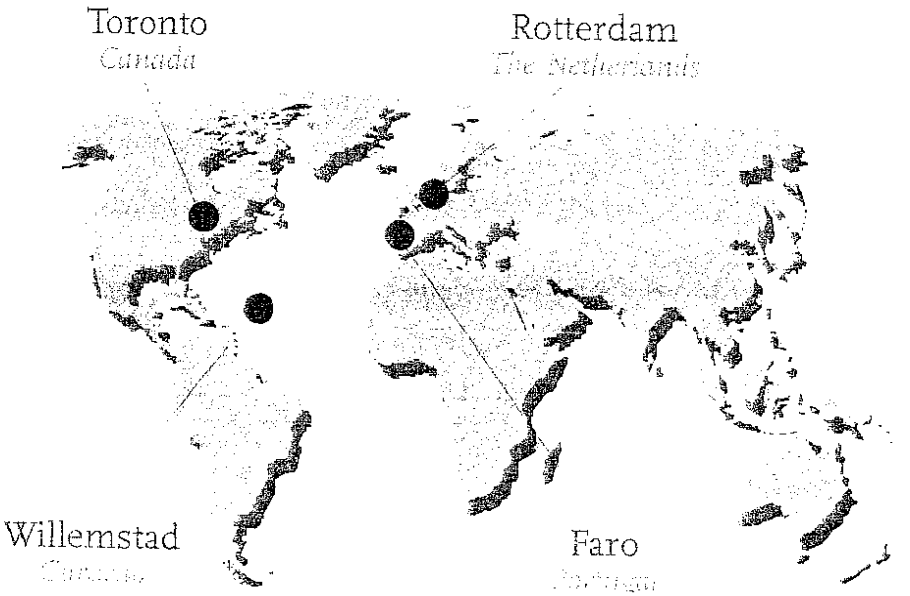

Eds. Henk van Arendonk / Frank Engelen / Sjaak Jansen

*Dick Molenaar**

The illusions of international artiste and sportsman taxation

1. *Introduction*

International performing artistes and sportsmen are taxed in a very special manner. In the countries of their performances, they most often meet a gross taxation of their performance income without the right to deduct expenses and are not allowed to file normal income tax returns after the end of the year. As a result, they experience tax credit problems in their residence country because the foreign tax is higher than the national income tax. For most of them, it is an illusion that Article 17 of the OECD Model Treaty leads to fair international taxation.

I came to Maarten Ellis with this subject in March 2000 and initially he was surprised. Until then, the general opinion was that Article 17 of the OECD eliminated tax avoidance behaviour by the top stars and tax experts did not think that anything could be wrong with the simple and straightforward tax measures resulting from the Article.[1] But my research results, figures and calculations were showing the negative sides and Maarten Ellis became very interested in the alternatives for Article 17.[2] Later, I heard to my pleasant surprise that he had been advocating a change in Article 17 in public. His audience must have thought

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1 Most recently, Luc Hinnekens, "European Court challenges flat rate withholding taxation of non-resident artiste. Comment on the *Gerritse* decision", *EC Tax Review* 4 (2003), pp. 207-213.

2 Some authors have questioned whether the system of Art. 17 OECD is still preferable or correct in modern times: Harald Grams, "Artist Taxation: Art. 17 of the OECD Model Treaty – a relic of Primeval Tax Times?", 27 *Intertax* (1999), pp. 188-193, Joel Nitikman, "Article 17 of the OECD Model Treaty – An Anachronism?", 29 *Intertax* (2001), pp. 268-274 and Dick Molenaar and Harald Grams, "How to Modernize Income Taxation of International Artistes and Sportsmen", *Tax Management International Journal*, Vol. 33, No. 4, April 9, 2004, pp. 238-248.

him convincing, as his public appearances usually are. Obviously, I am happy that he is giving his support.

Many countries impose a withholding tax on the performance fees of artistes and sportsmen. This tax is not only imposed on employees, but also on self-employed artistes and sportsmen, even when they do not have a permanent establishment in the country of performance. This practice is in accordance with international tax treaties, pursuant to which the taxation of artistes and sportsmen is allocated to the country of performance. The OECD supports the general rule in Article 17 of its Model Tax Convention (OECD Model); the United States follows the rule in its 1996 U.S. Model Income Tax Convention. According to the 1987 OECD Report,[3] the rule can be seen as an anti-avoidance measure to prevent:

highly mobile artistes and sportsmen, who pretend to live in tax havens, from taking gross self-employed income with them without paying tax in any country; and

artistes and sportsmen from not reporting foreign income in their home country.

Although it deviates from the general allocation rules, taxation at source sounds like a reasonable means of ensuring that every artiste and sportsman pays a share of his earnings to the government. But unfortunately, problems of excessive taxation arise in practice. This can be shown with the following, simple example[4]:

A German artiste performs in Spain, earning € 25,000. The Spanish non-domestic withholding tax is 25% (from gross) and the touring expenses are 60% (= € 15,000). The German artiste is a high earner, so his German domestic income tax rate reaches the average rate of 40%[5]:

3 "Taxation of Entertainers, Artistes and Sportsmen", in *Issues in International Taxation*, No. 2 (Paris: OECD, 1987).

4 More examples are given in Dick Molenaar, "Obstacles for International Performing Artists", 42 *European Taxation* 4 (2002), pp. 149-154.

5 When the artiste would use a corporation for his activities, his average corporation tax rate would be only 25% and the excessive taxation would be higher.

Spanish withholding tax: 25% x € 25,000 =	€ 6,250
German income tax:	
Gross earnings – 60% expenses = € 10,000 profit x 40% =	- 4,000
International excessive taxation	€ 2,250
	(insufficient tax credit)

2. *History of artiste and sportsman taxation*

The special tax rules for international artistes and sportsmen first appeared in the 1963 Draft of the OECD Model Tax Convention. Article 17 of this Draft stated that the right to tax the performance income of artistes and sportsmen was allocated (though not exclusively) to the country of performance, setting aside the normal rules of Article 7 (Business profits) and Article 15 (Dependent personal services).[6] Art. 17 was extended in 1977 with the addition of a second paragraph, stating that when another person (not the artiste or sportsman himself) receives the remuneration for the performance, the source country still holds the right to tax the income. Top artistes and sportsmen had started to use "loan-out" companies, usually owned by themselves, which contracted the performances of the artistes or sportsmen. The star companies provided the services of the artistes or sportsmen and were established in tax havens. The new Article 17(2) of the OECD Model was an additional measure in the battle against tax avoidance. Many countries could not "look through" a star company under their national legislation and lost the taxing right under the old Article 17. With Article 17(2), these countries obtained more means of levying tax on the income of top artistes and sportsmen.

More concerns were brought forward in the 1987 OECD Report, that recommended that the scope of Article 17(2) be extended to all legal entities that could receive fees for artistic and sports performances. This was later added in the 1992 change to the Commentary on the

[6] Since the removal of Art. 14 (Independent personal services) in 2001, only Art. 7 is mentioned for self-employed artistes and sportsmen in Art. 17 of the OECD Model

OECD Model. Thus, not only the income of the individual artiste or sportsman but also the profits of the separate legal entity are taxable under Article 17(2), regardless of whether the artiste is the owner or a shareholder or whether he has any profit-sharing in the company. This reversal in the Commentary took away any possibility to escape from source taxation on performance income.

Three countries, Canada, the United States and Switzerland, made observations on this reversal. In the 1987 OECD Report[7] and the 1992-2003 Commentary,[8] they stated that they were of the opinion that Article 17(2) should apply only in the cases of abuse mentioned in the 1977 Commentary. The United States has implemented its 1996 Model Convention with the provision that Article 17(2) does not apply when the artiste or sportsman does not have access to the profits of the other person that receives the performance fee. In that case, under Article 17(1), only the salaries of the artistes or sportsmen are taxable in the source country[9]. This treaty practice is also followed by Canada and a few other countries. But most countries have inserted the anti-avoidance rule of Article 17(2) of the OECD Model with its unlimited scope in their bilateral tax treaties. This difference between tax treaty practices in various countries leads to a discussion on what is fair and necessary regarding Article 17(2) - the *limited* approach of the 1996 U.S. Model/old 1977 OECD Model or the *unlimited* taxing right of the 1987 OECD Report/new 1992-2003 OECD Model.[10]

3. *National tax rules*

National tax rules for non-domestic artistes and sportsmen are often very onerous.

[7] Para. 90 of the 1987 OECD Report

[8] Para. 16 of the 1992-2003 OECD Commentary on Art. 17

[9] Paragraphs 233-239 of the Technical Explanation to the 1996 U.S. Model Income Tax Convention

[10] See for the arguments against the unlimited approach, Dick Molenaar and Harald Grams, "Rent-A-Star – The Purpose of Article 17(2) of the OECD Model", 56 *Bulletin for International Fiscal Documentation* 10 (2002), pp. 500-509.

Four principles are followed by many countries:

a. Production expenses are not deductible at source;
b. Payments to others than the artistes or sportsmen are very often also made taxable;
c. The withholding tax rate for non-domestic artistes and sportsmen is often higher than the average income tax rate for domestic taxable persons; and
d. No normal income tax settlement is possible at the end of the year.

Overview of the artiste and sportsman tax systems in various countries around the world:

	Tax at source	*Deduction of espenses*	*Tax rate*	*Normal tax return*
Austrialia	Yes	Yes	29-47%	Yes
Austria	Yes	No	20%	Yes
Belgium	Yes	No	18%	No
Brazil	Yes	No	25%	No
Canada	Yes	Yes	15%	Yes
Czech Republic	Yes	No	25%	No
Denmark	No			
Estonia	Yes	No	15%	No
Finland	Yes	No	15%	Yes
France	Yes	No	15%	Yes
Germany	Yes	No	21%	No
Greece	Yes	No	15-20%	No
Hungary	Yes	Yes	40%	Yes
Iceland	Yes	No	12,7%	No
Ireland	Yes	Yes	20%	No
Italy	Yes	No	30%	No
Japan	Yes	No	20%	No
Lithuania	Yes	No	15%	No
Luxembourg	Yes	No	10%	No
Mexico	Yes	No	25%	No
New Zealand	Yes	Yes	20%	Yes

	Tax at source	*Deduction of espenses*	*Tax rate*	*Normal tax return*
Norway	Yes	Yes	15%	No
Portugal	Yes	No	25%	No
Russia	Yes	No	30%	No
Slovak Republic	Yes	No	25%	No
Slovenia	Yes	No	15%	No
South Africa	Yes	No	18-40%	No
South Korea	Yes	No	20%	No
Spain	Yes	No	25%	Yes
Sweden	Yes	No	15%	No
Switzerland	Yes	No	7-32%	No
United Kingdom	Yes	Yes	23-40%	Yes
United States	Yes	Yes	30%	Yes

4. *Equal treatment within the European Union; the Arnoud Gerritse decision*

This overview shows that especially European countries are reluctant to allow the deduction of expenses and normal income tax settlements, with the Netherlands and the United Kingdom as positive exceptions. This has its effect on the mobility within the cultural and sports sector; research has shown that the gross and final taxation of most countries is obstructing the circulation of artistes (and sportsmen) in the European Union, creating (tax) obstacles for entering markets of the member states.[11] Therefore, it was not surprising that the European Court of Justice (ECJ) decided in the *Arnoud Gerritse* case[12] that the German gross and final artiste tax system was in breach with the freedom principles of

[11] See Paragraph III ("Taxation") of the Report "Study on the Mobility and Free Movement of People in the Cultural Sector" by the University of Paris, as assigned by the DG EAC of the European Commission (April 2002)

[12] Arnoud Gerritse, ECJ 12 June 2003, C-234/01. For an explanation of the decision, see e.g. Dick Molenaar and Harald Grams, "The Taxation of Artists and Sportsmen after the *Arnoud Gerritse* Decision", 43 *European Taxation* 8 (2003), pp. 381-383 and the CFE Statement, 44 *European Taxation* 2 (2004), pp. 184-191.

the EU Treaty. The ECJ ruled that Germany needs to allow (1) the deduction of expenses for performing artistes and (2) a comparison of the withholding tax with the final income tax rates.
But unfortunately, the Gerritse decisionwas not completely clear in every respect. Germany remained reluctant to allow the deduction of expenses already at the withholding stage, but only created a special refund procedure after the taxable year, and accepts not more than the deduction of directly linked expenses, for which original invoices need to be attached to the refund application. Both issues has led to two new cases for the ECJ, i.e. *FKP Scorpio Konzertproduktion* (C-290/04) and *Centro Equestro Leziria Grande Lda.* (C-345/04).

The outcome of these cases is predictable, because it cannot be expected that the ECJ accepts national legislation that treats a specific group of non-resident taxpayers, such as artistes and sportsmen, differently from other taxable persons, especially when they are in comparable circumstances[13].

5. *The importance of expenses*

Almost any artiste or sportsman incurs considerable expenses for his foreign appearances. The following expenses are normally incurred.

a. Travel and accommodation: buses, trucks, sometimes air travel, hotels, foods and drinks for a group of persons;
b. Equipment: sound, light, stage set-up, instruments, clothing and in the larger venues even video and laser;
c. Accompanying persons: sound and light technicians, roadies, tour managers, tour accountants, drivers and security;
d. Agents and managers, who plan the performances and fit them into the career development of the performer or sportsman; and
e. Various: administration, legal advice, insurance, rehearsals and pre-production costs.

We have done research in the Netherlands on these expenses for artistes. Data are available, because the Netherlands allow non-

[13] The ECJ has already pointed this out in the *Gerritse* decision.

domestic artistes and sportsmen to deduct their expenses prior to the performances; a special department of the tax administration has been set up to approve applications.[14] The study covers around 40-50% of the artiste performances in the Netherlands in the years 2001-2003 and the results are (in million euros)[15]:

	2001		2002		2003		Total	
Applications	415		579		611		**1,605**	
Performances	677		891		930		**2,498**	
Fees	16,5	*100%*	14,8	*100%*	15,3	*100%*	**46,6**	***100%***
Espenses	-11,9	*-72%*	-11,8	*-80%*	-11,0	*-72%*	**-34,8**	***-74%***
Profit	4,6	*28%*	3,0	*20%*	4,3	*28%*	**11,8**	***26%***

Interesting results, because according to our figures the expenses of non-domestic artistes in the Netherlands were 74% on average.[16] The Dutch tax authorities also studied the expenses in the year 2002 for their recent evaluation of the Dutch artiste and sportsman tax system and came to 64% expenses on average.[17] Figures were mostly taken from both US and UK pop artistes on tour in Europe, who stopped in the Netherlands for one or more shows, and from classical orchestras, theatre and dance companies. Total tour expenses were broken down per show, and therefore the results of the Dutch studies can be extrapolated to other European countries.

[14] This department belongs to the *Belastingdienst Buitenland* in Heerlen. The UK has a special department with the *Foreign Entertainers' Unit* in Solihull, Birmingham.

[15] We have studied only the expenses of performing artistes, because no reliable figures about sportsmen were available.

[16] Earlier we had studied the first eight months of the year 2001 and came to 76% expenses. These figures were published together with graphics in Dick Molenaar and Harald Grams, "The *Arnoud Gerritse* case of the European Court of Justice", 31 *Intertax*, pp. 198-204 (and some other articles).

[17] See *Brief aan Tweede Kamer* (Letter to the Second Chamber of the Parliament), 12 May 2004, no. WDB 2004-00270M

Strangely enough, the OECD does not want to provide rules for the deduction of expenses. In § 10 of the official Commentary on Article 17 of the OECD Model, the deduction of expenses for performances is discussed.

> "The Article says nothing about how the income in question is to be computed. It is for a contracting state's domestic law to determine the extent of any deduction for expenses. Domestic laws differ in this area and some provide for taxation at source, at a low rate based on the gross amount paid to the artistes and sportsmen."

Many countries follow this recommendation and impose their final withholding tax on the gross performance fees, but keep the withholding tax rate relatively high to avoid artistes or sportsmen with negligible expenses from getting away with low taxation.
At the IFA Congress in Cannes in 1995, Prof. Daniel Sandler[18] defended § 10 of the Commentary in his introduction to Seminar D by stating that it could be problematic for countries to compute the expenses for performances. But the practices in the United Kingdom and the Netherlands, where artistes and sportsmen can deduct their expenses, are proving that the assumption of Daniel Sandler is wrong. Both countries have good experiences with their systems and make it possible within a maximum period of four weeks to have a decision in advance on the amount of expenses to be deducted. This only leaves the artistes' or sportsmen's real income subject to withholding tax. Outside Europe, countries such as the United States, Australia and Canada also allow non-domestic artistes and sportsmen to apply for a deduction of expenses before the withholding tax is calculated.

Some countries have created a minimum threshold for small artistes and sportsmen with lower fees, under which no withholding tax needs to be deducted, e.g. the United Kingdom with £ 1,000 per group per show, the Netherlands with € 136, Belgium with € 400 and Germany with € 250 per artiste per show. The United States has inserted a *de minimis* amount in its tax treaties. The 1996 US Model Income Tax Convention sets this threshold on $20,000 per artist per year, but many

[18] Seminar D of the 49th IFA Congress in Cannes, *Cahiers de droit fiscal international*, Vol. 20d (The Hague: Kluwer Law International, 1995

tax treaties contain a lower amount (e.g. Australia $10,000, Belgium $3,000, Canada $15,000, France $10,000, Italy $12,000, the Netherlands $10,000, Spain $15,000 and Sweden $6,000).

6. *Tax revenue and administration costs*

The literature does not make clear whether the tax revenue from non-domestic artistes and sportsmen is important for the countries of performances. Performance fees, start and prize money are sometimes quite high and countries can justify to take "a piece of the pie" of the top stars. But as I have shown in paragraph 5, the expenses of non-domestic artistes (and sportsmen) are quite high (64% - 74% on average), which would support the principle of taxing the profit, i.e. the real income of the artistes and sportsmen from their performances, as a fair taxation. A final gross withholding tax, even at low percentage, is in any event too rough a measure. The evaluation of the artiste and sportsman tax rules in the Netherlands[19] provides interesting figures about the tax revenue in the year 2002 (in million euros).

Tax revenue in the Netherlands		**rate**	**tax revenue**
Performance fees (with applications)	18.0	20%	3.6
Deduction of expenses	-11.6	20%	-2.3
Net performance fees	6.4	20%	1.3
Performance fees (without applications)	15.5	20%	3.1
Total taxable fees non-domestic	21.9	20%	4.4

The tax revenue of € 4.4 million would have been considerable lower if applications for deduction of expenses had been submitted for all performance fees (€ 18.0 + 15.5 = € 33.5 million). I have calculated the following adjustments, at different levels of average expenses:

- average expenses 50%: taxable € 16.8 mln x 20% = € 3.4 mln (- € 1.0 mln)

[19] See footnote 17.

- average expenses 64%: taxable € 12.1 mln x 20% = € 2.4 mln (- € 2.0 mln)
- average expenses 74%: taxable € 8.7 mln x 20% = € 1.7 mln (- € 2.7 mln)

These adjustments lead to the conclusion that the tax revenue in the Netherlands of the special artiste and sportsman taxation lies between € 1.7 million (minimum) and € 4.4 million (maximum). This is a very small amount for a country with 16 million citizens in a very active cultural and sports environment.

With these Dutch figures the tax revenue in other countries can be estimated, based on the number of their citizens and the applicable withholding tax rate (in million euros, per year):

	citizens (millions)	multiply	tax rate	tax revenue	
				minimum	maximum
Germany	80	5	20%	8.5	22.0
United Kingdom	70	4.4	22%	8.2	21.3
France	60	3.8	15%	4.8	12.5
Belgium	9	0.6	18%	0.9	2.4
Spain	60	3.8	25%	8.1	20.9
United States	290	18.1	30%	46.2	119.5
Australia	20	1.3	29-47%	3.2	13.4

These figures of estimated tax revenue in the various countries are far from impressive. It seems to be an illusion that the taxation of the performance fees of non-domestic artistes and sportsmen would generate a reasonable contribution to a country's budget.

The collection of this withholding tax can only be effected at a high administrative expense. At least four parties are involved in the process of the (withholding) tax in the country of performance and the foreign tax credit in the country of residence:

a. tax advisers or accountants in both the country of residence and the country of performance;
b. the tax administration in the country of performance, which needs to set up a special tax department for non-domestic artistes and sportsmen that has the required knowledge of this special group of taxpayers;
c. the promoters of the concerts, theatre plays and sports tournaments, who are obliged to withhold the tax and declare it to the tax authorities in addition to having to provide non-domestic artistes or sportsmen with correct and reliable tax certificates; and
d. the tax authorities in the country of residence, which must check whether the foreign tax credit is based on the correct information about the foreign (withholding) tax.

These administration costs are high and even though figures are not available, the conclusion might be that the collection of tax from artistes and sportsmen in the country of performance cannot be very cost-effective.

7. *A possible escape through Article 17(3)*

In many international tax treaties a third paragraph has been added to Article 17, exempting artistes and sportsmen from taxation in the country of performance when the performances are substantially supported by public funds or based on a cultural exchange or a cultural agreement. This exception is based on § 14 of the Commentary on Article 17 of the OECD and can be called the "Art. 17(3) clause". The author has studied the use of "Art. 17(3)" in tax treaties and came to the surprising result that on average 66%% of the bilateral tax treaties contain this exception[20].

Countries are using this opportunity in their treaty negotiations to (partially) take away a major obstacle for international cultural exchanges. Not only does the gross and final taxation in the country of performance result insufficient tax credits in the residence country, it is

[20] The bilateral tax treaties of the 30 OECD member countries and 16 other countries were studied. The use of Article 17(3) varies from 41% for Switzerland, 44% for the UK, 45% for the Netherlands and 49% for the USA to 65% for Canada, 66% for Japan, 74% for Germany, 75% for France and 98% for China. Very unexpected results for an addition to Article 17, that is only mentioned as an option in paragraph 14 of the Commentary on Article 17 of the OECD Model.

also problematic to implement the tax credits in the salary administration of an orchestra, theatre or dance group, while tax credits on the level of the orchestra or group might be impossible, because such institutions are very often exempted from corporation tax in the residence country. But unfortunately, the "Art. 17(3)" exception leads to unequal treatment between subsidised cultural and sports institutions and commercial artistes and sports companies, giving cause in the European Union for interesting preliminary questions for the European Court of Justice (ECJ). In my understanding, no case has been brought forward yet, but such a case would stand a chance, as there seems to be no justification for this difference in treatment between subsidised and non-subsidised artistes and sportsmen. Comparing tax treaties with and without "Art. 17(3)" can also lead to the discussion whether the principle of Most Favoured Nation (MFN) treatment can apply to artistes and sportsmen.[21]

The use of "Art. 17(3)" in 66% of the tax treaties shows that the OECD, its Member countries and many others are aware of the excessive taxation resulting from Art. 17. The additional costs incurred by this excessive taxation would lead, evidently, to an increased need for subsidies for the cultural and sports organisations. And this raises the question whether countries are trying to protect their own interests and defend their state budgets with the "Art. 17(3) clause." That would intensify the feeling for non-subsidised artistes and sportsmen that it is an illusion that Article 17 of the OECD leads to fair taxation.

8. *Do we want to live with illusions?*

There seems to be no doubt, that the international artiste and sportsman taxation achieves its goals of counteracting tax avoidance and creating compliance with Article 17 of the OECD. But it has also created the two illusions, namely that it is a fair taxation and that it contributes considerably to the state budgets of the countries of the performance. I have shown in the previous paragraphs that artistes and sportsmen suffer

[21] See more in general regarding MFN treatment, the *D* case of the ECJ, C-376/03, based on preliminary questions by Court of 's-Hertogenbosch, 24 July 2003, *VN* 2003/52.23.

from excessive international taxation and that the tax revenue in the source countries is negligible, while the administration costs are high. Do we want to live with illusions? Yes, when watching and listening to artistes during their performances and when breathlessly following a football match or another sports event, but no when it comes to taxation. Perhaps the top stars will not suffer from excessive taxation, but they only represent 1-2% of the total artiste and sportsman population. The vast majority earns a low, middle or higher income, but needs fair taxation to survive "on the road"; they are normal people, living in normal houses, with children in normal schools. Its is unclear why they should receive special and heavy tax treatment.

In the short term, countries need to react on the ECJ cases, such as *Gerritse*, *Scorpio* and *Centro Equestro* and change their national tax legislation, i.e. allow the right to deduct expenses prior to performances and to file a normal income tax return. But in the long term, the criticisms of and alternatives for Article 17 of the OECD from certain authors deserve a closer look.[22] The first signs of a possible change may currently be seen in the Netherlands, where the Ministry of Finance has performed an official evaluation of its non-domestic artiste and sportsman taxation[23] and is now considering a unilateral exemption for countries that have incorporated the tax credit method in their tax treaties with the Netherlands. To achieve this tax exemption with respect to Dutch performance fees, the artistes and sportsmen from these countries would need to certify with a declaration from their tax authorities that they actually live and are subject to tax in the relevant treaty country. As a result, they will only pay income tax in the country of residence and will no longer experience excessive international taxation. Their compliance is secured, because the local tax inspector of the residence country is aware of the existence of the foreign income; this may be strengthened by the exchange of information between countries.[24] And tax avoidance is still counteracted, because artistes and sportsmen who

[22] See footnote 3.
[23] See footnote 17.
[24] Based on bilateral treaties between countries and on the EU-Directive 77/799 regarding the exchange of information

presume to live in tax havens do not qualify for this tax exemption in the source country. The Netherlands has inserted the tax credit method in 80% of its tax treaties.[25] Introducing this unilateral exemption would virtually mean the end of taxation of non-domestic artistes and sportsmen in the Netherlands, but at little loss of tax revenue (a minimum of € 1.7 million and a maximum of € 4.4 million per annum), while allowing for an interesting saving of administration costs.

9. *Epilogue*

The international taxation of non-domestic artistes and sportsmen has led to a jungle of fiscal legislation. Most countries tax gross performance fees, others allow a deduction of expenses, some countries accept tax returns after the year-end, and in more than half of the tax treaties an exemption is allowed for subsidised artistes and sportsmen as well as in the event of a cultural exchange or agreement. The result of this fiscal jungle is just minimal tax revenue for the source country. What are we fussing about? Why do we collect so little tax money at such a high administrative expense? It is time to take away the illusions of artiste and sportsmen taxation and amend Article 17 of the OECD so that it provides for home state taxation instead of taxation in the source state , though only when taxation there is secured. The initiative in the Netherlands in this respect is very much worth following. Let's leave the illusions to the artistes and sportsmen and return to reality.

[25] And this percentage is growing, because the country is following in its treaty negotiations the recommendation of § 12 of the Commentary on Art. 17 to use the credit method for the relief of double taxation.