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OECD/International

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Influencer Income and Tax Treaties: A Response

The authors respond to the article written by Savvas Kostikidis on the taxation of influencers' income that appeared in the June 2020 issue of the *Bulletin for International Taxation*. The authors advance their solution to the problem, which would include the abolition of article 17 of the OECD Model.

"*Much Ado about Nothing*" – William Shakespeare (1600)

1. Introduction

"Influencer Income and Tax Treaties" by Savvas Kostikidis (2020)[1] is a very interesting article and invites a reaction. It discusses whether modern influencers may be identified as entertainers under article 17 of the OECD Model[2] and demonstrates that this special provision makes the taxation of cross-border entertainment very complicated. Problems arise not only with the definition, but also with the apportionment of income, which entertainers and sportspersons have but ordinary persons and companies do not. The article states the reasons that the OECD gave in 2014 for keeping this special provision in the OECD Model (2014),[3] and adds that reading between the lines suggests that article 17 is based on the benefit principle, which would mean that states want a share of the earnings of famous persons on their territory.

Influencers arose with social media and derive their attention from digital communication. This makes them an interesting case study in asking how the taxation of entertainment relates to initiatives for the taxation of the digital economy. States are starting to impose source taxation, even when digital companies do not have a permanent establishment (PE). The OECD has taken the initiative in coming up with a Unified Approach for the taxation of digital companies, and the UN has tried to cover this situation with an extension to the UN Model.[4] In this article, the authors will compare both worlds and discuss what they can learn from each other to avoid tax obstacles and double taxation.

2. Influencers and Article 17 of the OECD Model

The first topic is whether influencers fit within the scope of the term "entertainers" in article 17 of the OECD Model. Kostikidis came to that conclusion and gave his considerations, but the present authors have some remarks.

The current title of article 17 of the OECD Model favours Kostikidis. In the OECD Model (2014), this header changed from "Artistes" to "Entertainers", and the OECD itself acknowledged in its Report of 26 June 2014 (OECD Report (2014)) that the term "entertainer" is broader than the term "artiste".[5] But strangely enough, the OECD did not give examples to justify that change and kept the descriptions in the text of article 17(1) of the OECD Model (2014) and in the Commentary on Article 17 of the OECD Model (2014)[6] the same as before. However, these examples are still about "old-fashioned" performing artistes, such as stage performers, film actors, actors in a commercial and musicians, and sportspersons, such as runners, jumpers, swimmers, golfers, jockeys, footballers, cricketers, tennis players and racing drivers. In addition, the examples cover billiards, snooker, chess and bridge players. Unfortunately, the Commentary on Article 17 (2014) was not extended to encompass new types of entertainment, such as influencers,[7] YouTubers and bloggers,[8] or new sports, such as esports.[9]

The authors have doubts as to whether Kostikidis is correct in concluding that influencers should fall within the scope of article 17 of the OECD Model. As he says in his article,[10] an influencer mainly promotes products or goods for others, which means that the real entertainment character is only secondary. This may be different for YouTubers, vloggers and bloggers, who are aiming their messages at their audience in order to create a following and are not primarily promoting goods and services for others, as influencers do. With this in mind, an influencer is more like a model, in respect of which the OECD has stated in the Commentary on Article 17 (2014)[11] that presenting clothes during a fashion show or photo session falls outside the scope of article 17 of the OECD Model. But the same Commentary also gives "actors in a commercial" as an example of entertainers falling under article 17 of the

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1. S. Kostikidis, *Influencer Income and Tax Treaties*, 74 Bull. Intl. Taxn. 6 (2020), Journal Articles & Papers IBFD.
2. Most recently, *OECD Model Tax Convention on Income and on Capital* (21 Nov. 2017), Treaties & Models IBFD.
3. *OECD Model Tax Convention on Income and on Capital* (26 July 2014), Treaties & Models IBFD.
4. *UN Model Double Taxation Convention between Developed and Developing Countries* (1 Jan. 2017), Treaties & Models IBFD.
5. OECD, *Issues related to Article 17 of the OECD Model Tax Convention* para. 31 (OECD 2014).
6. *OECD Model Tax Convention on Income and on Capital: Commentary on Article 17* paras 3, 4 and 6 (26 July 2014), Treaties & Models IBFD.
7. *See* D. Busemann & G. Gilson, *Unsicherheiten über Abzugsteuern nack §50a EstG bei der Zusammenarbeit mit Influencern*, DStR 42/2019.
8. *See* R. Homuth, *Einkünfte X.0: Blogger, Influencer, YouTuber & Co.*, NWB (26/2018).
9. S. van Overbeek & D. Molenaar, *The Emergence of Esports*, 73 Bull. Intl. Taxn. 2 (2019), Journal Articles & Papers IBFD.
10. Kostikidis, *supra* n. 1, at sec. 1.1.
11. Para. 3 *OECD Model: Commentary on Article 17* (2014).

OECD Model.[12] In the end, the Commentary on Article 17 (2014) recognizes that there are also mixed situations, and that seems to be applicable to such social media actors as YouTubers, bloggers, vloggers and influencers.[13] Most of them have advertising, from which they derive income, based around their entertaining films and posts, but some are aiming their activities primarily at promoting products and services, while others have their own independent stories to tell.

In his article,[14] Kostikidis extensively discusses the personal scope of article 17 of the OECD Model, in which he also looks at the position of other models. It may be acknowledged that some states have expressed positions against this part of the Commentary on Article 17 (2014), including Argentina, Brazil, India[15] and Malaysia,[16] and that it is difficult to distinguish this situation in practical cases, but the authors believe that the OECD approach to models is the correct one to follow, and that promoting goods or services does not fall under the definition of entertainment. But as already mentioned in this section, it is hard to distinguish this activity from the example of an actor in a commercial, who is regarded as an entertainer under article 17 of the OECD Model. It would be good if the OECD would update the Commentary on Article 17 of the OECD Model (2017).[17]

3. The Benefit Principle

The next topic of Kostikidis' article for consideration is his statement that the inclusion of article 17 of the OECD Model is also based on the benefit principle. This would mean that tax revenue was one of the reasons why the OECD and its member countries wanted special taxing rules for entertainers and sportspersons.

This is an interesting suggestion, but it is not to be found in the OECD Report (2014) or in other publications, such as the OECD Report (1987).[18] The benefit principle can be found in the literature, but only in Sandler (2008), who wanted to broaden the scope of article 17 of the OECD Model to all well-known persons, including speakers, former politicians giving lectures and others, and defended this with the argument that it would be fairer to tax all well-known persons at source and that this could result in a valuable amount of tax revenue for source states.[19] Later, another Canadian, Arnold (2011), supported this new approach,[20] but it did not make it into the OECD recommendations.

But even when it is not mentioned officially, it is still possible to imagine that states do not want well-known entertainers and sportspersons to leave their territory without paying a contribution to their budget. In general, taxing rights are based on the use of public facilities, such as having a PE in another state[21] or going as an employee for a longer period to another state.[22] For short-term visits, the use of public facilities is normally considered to be so negligible that it seems more reasonable to allocate the taxing right to the residence state.

But the main reason behind article 17 of the OECD Model has remained anti-avoidance, because top entertainers and sportspersons tend to move to tax havens with no or low taxation, which has led to the view that there should be a source tax in the state of work. This is confirmed in the OECD Report (2014), which is discussed further in section 5.

For the benefit principle to apply, it is important to know how much of the tax revenue from visiting entertainers and sportspersons should be payable to a state. Unfortunately, not much information is available, but in 2019 the Minister of Finance in Belgium had to answer parliamentary questions on this point.[23] He provided the list of tax earnings (per year in euro) shown in Table 1.

Table 1 – Tax revenue derived by Belgium from entertainers and sportspersons, 2014-2018

Year	Entertainers (EUR)	Sportspersons (EUR)	Total revenue (EUR)
2014	14,783,534	2,438,895	17,222,429
2015	14,732,761	3,535,922	18,268,683
2016	15,989,872	3,393,602	19,383,474
2017	17,572,315	4,423,913	21,996,228
2018	16,675,645	4,209,088	20,884,733

The most lucrative year was 2017, bringing EUR 22 million in revenue from the source withholding tax. Belgium had 11.3 million citizens in 2017 and is an open and active state with many performances and sports events, which implies that the tax revenue can be extrapolated to many other states (*see* Table 2).

12. Id.
13. Id.
14. Kostikidis, *supra* n. 1, at sec. 2.2.3.
15. Para. 8 Positions on *OECD Model: Commentary on Article 17* (2014).
16. Id., at para. 5.
17. *OECD Model Tax Convention on Income and on Capital: Commentary on Article 17* paras 3, 4 and 6 (21 Nov. 2017), Treaties & Models IBFD.
18. OECD, *The Taxation of Income derived from Entertainment, Artistic and Sporting Activities – Report: adopted on 27 March 1987* (OECD 1987), Primary Sources IBFD.
19. D. Sandler, *Artistes and Sportsmen (Article 17 OECD Model Convention)*, in *Source versus Residence – Problems Arising from the Allocation of Taxing Rights in Tax Treaty Law and Possible Alternatives* pp. 215-246 (M. Lang ed., Wolters Kluwer 2008).
20. B.J. Arnold, *The Taxation of Income from Services under Tax Treaties: Cleaning Up the Mess*, 65 Bull. Intl. Taxn. 2 (2011), Journal Articles & Papers IBFD.
21. Art. 7 *OECD Model* (2017).
22. Id., at art. 15.
23. Answers of 8 August 2019 from the Belgian Minister of Finance, Alexander De Croo, to Parliamentary Questions from Servais Verherstraeten. The figures come from a special tax form that Belgian promoters of performances and sports events have to complete before they present the withholding tax for payment to the Belgian tax authorities. The tax rate is 18% of the earnings, while non-resident entertainers and sportspersons have the right to deduct their expenses in advance, but only after approval by the Belgian tax authorities (*Voorafgaand Akkoord*). Since 2009, these non-resident entertainers and sportspersons have also had the right to file a normal tax return in a subsequent year, but there is no information on how many tax refunds have been paid out under that procedure.

Table 2 – Extrapolated tax revenue from entertainers and sportspersons for other states, derived from the Belgian example

State	Citizens (millions)	Tax rate (%)	Estimated tax revenue (millions (EUR))
Australia	25.5	29	80.0
Austria	8.9	20	19.3
Canada	37.6	15	61.0
Denmark	5.8	-	11.3[a]
France	67.0	15	108.7
Germany	83.0	15.825	142.1
Ireland	4.9	-	9.5[a]
Netherlands	17.3	-	33.7[a]
Sweden	10.2	15	16.5
United Kingdom	66.7	20	144.3
United States	325.1	30	1,054.9

a This estimate of tax revenue is only theoretical, as this country does not have a source withholding tax for non-resident entertainers and sportspersons.

The possibility of deducting expenses in advance or filing tax returns in a subsequent year is not taken into account here. This is very often the case in Australia, Germany, the United Kingdom and the United States, so the real figures regarding tax revenue will be lower than given for these states. But altogether, these figures are not impressive and do not support the position that states want to retain article 17 of the OECD Model (and in their bilateral tax treaties) because of the tax revenue.

In addition, the total tax revenue in each state will fall considerably because of the tax credits (or exemptions) for resident entertainers and sportspersons engaging in foreign performances and sporting events. This will equalize the tax earnings from non-residents, so that, on balance, no real tax revenue will remain for a state. This means that not including the equivalent of article 17 of the OECD Model in a bilateral tax treaty would result in the same tax result for states as now.

4. Complicated Apportionments

A large part of Kostikidis' article[24] is devoted to the vertical and horizontal apportionment of the income of influencers. The present authors believe he is right to consider this a complex matter, and experience in practice every day the difficulties of these apportionments. It is hard to allocate the taxing right for different income elements, especially when the text of article 17 of the OECD Model specifies that this taxing right applies only to "income derived by a resident of a state as an entertainer or sportsperson from his personal activities as such in the other state". When the work is done in one state but the income is derived from another state, it is not easy for states to determine and use the taxing right. In addition, the income can be divided into different types, such as with models in Germany, who are partially paid for their appearance and partly for their personality rights.[25] And unequal treatment can arise from article 17 of the OECD Model, as with Kostikidis' example of the German opera choir singer working as an employee in Switzerland, who is not entitled to the exemption method (under article 15) but, rather, to the tax credit method (under article 17) in Germany.[26]

The conclusion that may be derived from these apportionments is that article 17 of the OECD Model makes the international taxation of entertainers and sportspersons very complicated and gives rise to the risk of double or excessive taxation or even double non-taxation. It leads to high administrative expenses, not only for (i) the entertainers and sportspersons and (ii) the organizers of the performances and sports events, but also for (iii) the tax authorities in the source state (when levying the source tax and allowing deductions for expenses and tax returns) and (iv) the tax authorities in the residence state (when applying the correct tax credit or exemption).

5. Why We Do Not Need Article 17 of the OECD Model

In his article,[27] Kostikidis mentions the three reasons why the OECD decided not to remove article 17 of the OECD Model (2014) but instead to retain it. These three reasons are:

- residence taxation should not be assumed, given the difficulty of obtaining the relevant information;
- article 17 of the OECD Model permits the taxation of a number of high-income earners who can easily move their residence to low-tax jurisdictions; and
- source taxation of the income covered by article 17 can be administered relatively easily.

These reasons are not realistic or convincing, because:

- currently, the relevant information can easily be obtained by the residence state, as past performance dates can be found on the Internet, payments are almost always done via banks and states are improving their exchange of information.[28]
- low-tax jurisdictions normally do not have tax treaties, which means that article 17 of the OECD Model does not have any effect on tax treaties. To counteract the move to tax havens, states only need to have a unilateral source withholding tax on outgoing income. Why, for example, would Germany need to have the equivalent of article 17 of the OECD

24. Kostikidis, *supra* n. 1, at secs 2. and 3.

25. DE: *Bundesfinanzmisterium* (Federal Ministry of Finance), 9 January 2009, IV C 3, BStBl 2009 I, p. 362.
26. This also happened with a Swedish football player in the Netherlands, who received a share of the transfer fee from his previous Swedish club/employer, but received only the tax credit (from article 17 of the *OECD Model*) and not the exemption method (from article 15) in the Netherlands. This is strange, because he was undoubtedly an employee. *See* the decision of the Netherlands *Hoge Raad* (Supreme Court, HR) in NL: HR, 7 May 2010, Case 08/02054, BNB 2010/245, Case Law IBFD.
27. Kostikidis, *supra* n. 1.
28. The residence state could also obtain the right to undersign the form for source tax exemption, which would provide information about foreign income, just as with the exemption application procedure for royalties. This suggestion was previously made in H. Grams, *Artist Taxation: Art. 17 of the OECD Model Treaty – A Relic of Primeval Tax Times?*, 27 Intertax 5, p. 189 (1999).

Model in a tax treaty with France, the Netherlands, the United Kingdom and similar states? Those states are clearly not low-tax jurisdictions. This situation is easy to administer, but why only for entertainers and sportspersons? The same argument is not used for other sources of income, such as those derived by the self-employed, as well as royalties, dividends, employment income and pensions. Moreover, source taxation makes it more complicated because the income must also be reported in the residence state, where the elimination of double taxation should be achieved.

On this basis, the conclusion must be that the reasoning behind article 17 of the OECD Model is wrong. Article 17 of the OECD Model is not needed in the modern world, where influencers, YouTubers, vloggers and bloggers are the new entertainers. Life would be much easier without such a disturbing tax provision.

6. Possible Restrictions in the Commentary on Article 17

The good news from the OECD Report (2014) was that the OECD also offered some new options for restricting the scope of article 17 of the OECD Model. These were mentioned only in the Commentary on Article 17 (2017), which make them not so strong, and now that six years have passed it would be very helpful to promote these restrictions to the text of article 17 of the OECD Model itself. We note these options below:

– employees:[29] states can agree in their bilateral tax treaties to exclude employees from article 17 of the OECD Model. This would mean that article 15 of the OECD Model would prevail over article 17, so that article 15(2) for posted workers would also apply to entertainers and sportspersons. The three justifications for article 17 of the OECD Model (*see* section 5.) do not seem to apply to employees.[30]

– expenses and income tax returns:[31] it can also be included that expenses should be deductible at source and normal tax returns should be fileable in a subsequent year. Within the European Union, this is already obligatory after the *Gerritse* (Case C-234/01),[32] *Scorpio* (Case C-290/04)[33] and *Centro Equestre* (Case C-345/04)[34] decisions. Australia, the United Kingdom and the United States have already had these options for many years in their national legislation. This seems to be a straightforward element for new tax treaties.

– minimum threshold:[35] with a minimum threshold, smaller and medium-sized entertainers and sportspersons in terms of income can be spared the complicated taxation that follows from article 17 of the OECD Model. The OECD has taken this over from article 16 of the US Model,[36] but gives 15,000 International Monetary Fund (IMF) Drawing Rights (approximately, EUR 18,000) per person per year as an example, whereas the United States has increased the threshold to USD 30,000 (approximately EUR 25,500) per person per year in the US Model (2016).[37]

– public funds:[38] approximately two out of three tax treaties already have an exception for subsidized entertainers and sportspersons. The definition that they should be wholly or mainly funded from public sources requires more than a 50% subsidy, which, in practice, is very high.[39]

– limited approach of article 17(2) of the OECD Model:[40] some states have expressed that in their tax treaties they will only apply the limited approach of article 17(2), as it was when the second paragraph of article 17 was introduced in the OECD Model (1977).[41] This means that only payments to associated parties fall within the scope of article 17(2) of the OECD Model, and that is a very helpful restriction for many entertainment companies and sports teams.[42]

However, unfortunately, these restrictions will not help influencers and other social media stars very much, and the same is true for other individual entertainers and sportspersons.

7. Taxing the Digital Economy

In addition to Kostikidis' article, we want to make a connection with taxing the digital economy. Not just because influencers and other social media stars communicate by digital means, but also because both article 17 of the OECD Model and taxing the digital economy set aside the main international principle of a PE in taxing companies (and the self-employed) in the source state, and replace it with the use of the services by consumers in the source state (consumer-facing businesses). It also openly brings forward the benefit principle as one of the justifications for source taxation.

29. Para. 2 *OECD Model: Commentary on Article 17* (2017).
30. This would also take away the unfair difference between the tax credit method used in article 17 of the *OECD Model* (2017) and the exemption method employed in article 15, as discussed in section 4. and footnote 18 of this article.
31. Para. 10 *OECD Model: Commentary on Article 17* (2017).
32. DE: ECJ, 12 June 2003, Case C-234/01, *Arnoud Gerritse v. Finanzamt Neukölln-Nord*, Case Law IBFD.
33. DE: ECJ, 3 Oct. 2006, Case C-290/04, *FKP Scorpio Konzertproduktionen GmbH v. Finanzamt Hamburg-Eimsbüttel*, Case Law IBFD.
34. DE: ECJ, 15 Feb. 2007, Case C-345/04, *Centro Equestre da lezíria Grande Lda v. Bundesamt für Finanzen*, Case Law IBFD.
35. Paras 10.1-10.4 *OECD Model: Commentary on Article 17* (2017).
36. *United States Model Income Tax Convention* (17 Feb. 2016), Treaties & Models IBFD.
37. But the OECD also provides the option to make the threshold variable, following the GDP index, which is very good for long-running tax treaties.
38. Para. 14 *OECD Model: Commentary on Article 17* (2017).
39. *See* D. Molenaar & H. Grams, *Article 17(3) for Artistes and Sportsmen: Much More than an Exception*, 40 Intertax 4 (2012).
40. Para. 16 *OECD Model: Commentary on Article 17* (2017).
41. *OECD Model Tax Convention on Income and on Capital* (11 Apr. 1977), Treaties & Models IBFD.
42. Canada, Switzerland and the United States have made this reservation with regard to article 17 of the *OECD Model* (2017) in paragraph 16 of the *OECD Model: Commentary on Article 14* (2017). The United States also mentions this restriction in article 16(2) of the *US Model* (2016). *See also* D. Molenaar & H. Grams, *Rent-A-Star – The Purpose of Art. 17(2) of the OECD Model*, 56 Bull. Intl. Fiscal Docn. 10 (2002), Journal Articles & Papers IBFD.

Taxing the digital economy is a result of the OECD/G20 Base Erosion and Profit Shifting (BEPS) programme, which was successfully coordinated by the OECD and has led to many recommendations, including proposals for changes in bilateral tax treaties, implemented by way of the Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting (3 June 2017) (the Multilateral Instrument (2017)).[43] This has required so much energy and focus on the part of the OECD that taxing the digital economy was not directly followed up. Some states have become anxious, because they were concerned about very large international digital companies, mainly from the United States but some of them Chinese, collecting income from their territory that they could not tax because of the lack of a PE.[44] This situation has caused some states to announce unilateral source-withholding taxes of between 1.5% and 7.5%,[45] even when, under the relevant tax treaties, it is unclear whether a digital enterprise in its residence state would be entitled to a tax credit or exemption. This entails a realistic risk of double taxation.

The tax problems of both entertainers and/or sportspersons and the digital companies are comparable: the definition of personal scope, apportionment of income, deductibility of expenses, the risk of double or excessive taxation and high administrative expenses. These problems hit, in income terms, the small and medium-sized much harder than the big players, who will have the budget to employ good advisers who can help them avoid double taxation.

The OECD has taken the initiative and come up with a proposal for a Unified Approach with Pillars I and II.[46] Briefly, Pillar I proposes that states in which digital companies are selling their content will decide together what the total worldwide profit of that digital company has been, how that will be divided between these states and how the residence state will eliminate double taxation. This coordinated approach will be led by the tax authorities of the residence state. With Pillar II, the OECD wants to arrive at a minimum corporation tax rate, so that competition between states with very low tax rates and artificial tax structures, with the resulting transfer of profits to such low-tax jurisdictions, will be avoided.

The Unified Approach is still very much under discussion, but entertainment and sports taxation can learn from some of its elements:

– A high minimum threshold: there seems to be a consensus that a high minimum threshold for digital services taxes (DSTs) would be reasonable. This would avoid the situation of small and medium-sized digital companies also having to undertake complicated administrative work. The proposal is a minimum turnover of EUR 750 million worldwide and EUR 50 million turnover per state.
– This approach is comparable to that which the United States already has for entertainers and sportspersons with its threshold in article 16(1) of the US Model, and as applied in its tax treaties. But the OECD mentions the threshold only in the Commentary on Article 17 of the OECD Model (2017) and should upgrade this to the text of article 17 of the OECD Model itself, after which all states could start to use this threshold in their tax treaties. The same applies to article 17 of the UN Model. The threshold could even be set at a higher level in order to be more effective, as proposed in the OECD Unified Approach for digital companies.
– A low source withholding tax: the rates of DSTs vary from 1.5% to 7.5% on gross income, while entertainers and sportspersons face a 15% to 30% tax on gross income at source. A lower rate would remove the risk of double taxation.
– Coordination between tax authorities: this would also help entertainers and sportspersons performing worldwide, because it would reduce their administrative expenses arising from different procedures in every state and would certify the tax credit in the resident state.

The UN has also come up with a new proposal for the taxation of digital companies, through which it wishes to add a new article 12B to the UN Model.[47] There is no threshold in this proposal, but there is an easier method of calculating how much turnover or profit should be allocated to the states where a company is active. There will be more discussion in time as to whether this alternative will be adopted by states.

8. Conclusions

The taxation of influencer income is an interesting topic, and its discussion was initiated by the article by Savvas Kostikidis in the June 2020 issue of the *Bulletin for International Taxation*.[48] The present article offers a response, in which the authors have expressed their doubts as to whether influencers would fall within the personal scope of article 17 of the OECD Model as entertainers and sportspersons. Hopefully they would not, because, otherwise, they would enter into a problematic world of the apportionment of income, taxation at source and the elimination of double or excessive taxation in their residence state. Unfortunately, article 17 of the OECD Model gives rise to tax problems and high administrative expenses; nevertheless, the OECD and its member countries decided in the OECD Model (2014) to retain

43. *Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting* (7 June 2017), Treaties & Models IBFD.
44. Examples include Alibaba, Apple, Facebook, Google, Netflix and Spotify.
45. Examples of unilateral digital service taxes (DSTs) are Austria 5%, Belgium 3%, France 3%, Hungary 7.5%, Poland 1.5%, Spain 3%, Turkey 7.5% and the United Kingdom 2%, all on gross earnings without deduction of expenses.
46. OECD, *Secretariat Proposal for a "Unified Approach" under Pillar One* (OECD 2019).
47. UN Committee of Experts on International Cooperation in Tax Matters, 21 July 2020.
48. Kostikidis, *supra* n. 1.

the article, even though the three reasons given for this are neither realistic nor fair (*see* section 5.).

It may be that states wanted to keep the article because they believe they could profit from the tax revenue to be derived from well-known entertainers and sportspersons performing on their territory, but the figures from Belgium show that this tax revenue is very low (*see* section 3.). And such income falls almost to nil when the tax credits for residents with foreign performance income are brought into the same calculation. "Much ado about nothing", as William Shakespeare wrote around 1600.

The comparison with taxing the digital economy may place the taxation of entertainers and sportspersons in another perspective. In this new era of business, states seem to have given up on the principle of a PE and the use of public facilities in the allocation of the taxing right, and, instead, have made a connection with the use of the digital services in their territory. The taxation of entertainers and sportspersons can learn from this regime, with its high minimum threshold, small and medium-sized entities not being caught by the system, low source withholding tax rates and coordination between tax authorities with bigger tours or events to avoid double taxation. And perhaps that regime could be implemented for entertainers and sportspersons with the same Multilateral Instrument as is intended for the new taxing rules for digital companies.

If influencers do not fall under article 17 of the OECD Model, then it is likely that article 7 of the OECD Model or article 14 of the UN Model would apply to them, as self-employed earners. Royalties could fall under article 12 of the OECD Model and the UN Model, while, following the discussion on the digital economy, article 12B of the UN Model might apply to everything. Only in circumstances of genuine employment would article 15 of the OECD Model and the UN Model apply.

9. Postscript: Virtual Influencers

The tax situation of the virtual influencer Esther Olofsson (Instagram: esther.olofsson) is different. She seems to go around in Rotterdam, Netherlands. She is smart, clever, good-looking and goes to new and trendy places, while also promoting existing products and events. But the distinction from other influencers is that she does not exist in reality, as she is the creation of Maarten Reijgensberger of the RauwCC communication agency. The foreign income derived from her activities will not be for her but for the communications agency, and these will clearly be business profits under article 7 of the OECD Model and the UN Model. But this is just a single case to be noted, because a virtual influencer such as Esther Olofsson is still an exception in the growing world of human influencers.