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Minimum Threshold for Entertainers and Sportspersons in Article 17 of the OECD Model

This article considers the implications of article 17 of the OECD for lesser-known entertainers and sportspersons, especially with regard to the use of *de minimis* thresholds for the imposition of withholding tax on such individuals as contained in, inter alia, the Commentary on Article 17 of the OECD Model (2014).

1. Tax Problems Primarily Affect Less Well-Known Entertainers and Sportspersons

The special international tax rules for entertainers and sportspersons (performers) very often lead to problems, thereby resulting in excessive or even double taxation. This has been described in various articles and books.[1] It is also recognized that these problems more often apply to less well-known performers than to the top stars, especially because such performers cannot pay for qualified tax advisers, while, compared to their income, the tax losses can be considerable.

Most states have a withholding tax in their national law for foreign entertainers and sportspersons performing on their territory. This is supported by article 17 of the OECD Model,[2] which is adopted in almost all tax treaties. Under this article, the state of the performance is allocated the taxing right, regardless article 7 (for companies and the self-employed) and 15 (for employees) of the OECD Model.

Under article 17(2) of the OECD Model, not only payments to the performers, but also to other persons may be taxed. This means that the article is a catch-all provision. On the other hand, the performer is entitled to a tax credit in the residence state under article 23 of the OECD Model. However, unfortunately, altogether, this approach increases the risk of problems arising in practice. Examples 1 and 2 illustrate two clear cases of excessive international taxation.

Example 1

A Dutch pool billiard player finishes third in a tournament in Poland and receives EUR 8,000 in prize money. His direct travel and lodging expenses are EUR 1,000 and his (allocated) indirect material, coaching and overhead expenses are EUR 2,500, thereby resulting in a profit on the Polish tournament of EUR 4,500. The Polish withholding tax is 20% with no option to deduct expenses, which means that EUR 1,600 in Polish tax is paid.

Back in the Netherlands, the billiard player includes the Polish income in his income tax return, deducts his expenses and, after other deductions for mortgage, self-employment allowances and such, the Dutch tax on this profit is EUR 850. The allowable foreign tax credit cannot be greater than this, which means that EUR 750 (EUR 1,600 less EUR 850) of excessive taxation remains.

Some of the Polish tax may be refunded once a tax return has been filed in Poland, but the filing costs are likely to be relatively high because tax advisers would be involved both in Poland and in the Netherlands.

Example 2

A German classical orchestra performs in Spain, earning EUR 30,000. The Spanish non-domestic withholding tax is 25% of the gross amount. Direct and indirect expenses are 50% of the costs, i.e. EUR 15,000. The average German income tax rate for the musicians is 35%, whereas the orchestra itself is exempted. This leads to the following result:

	EUR
Spanish withholding tax: 25% × EUR 30,000	7,500
German tax credit (maximum): Gross EUR 30,000 – 50% of expenses = EUR 15,000 of income × 35%	5,250
Excessive international taxation	2,250

In addition, it is very often difficult to obtain the tax credit, such as when:
- the Polish or Spanish tax certificate is missing; or
- the German musicians are on a monthly payroll and the foreign tax cannot be converted into individual tax credits.

These difficulties readily arise, which means that excessive taxation easily turns into double taxation because the full amount of tax is paid in both the performance state and the residence state.

2. Why Does Article 17 of the OECD Model Still Exist?

The Netherlands has taken this problem seriously and unilaterally removed the taxation of non-resident performers in 2007, subject to the condition that the non-resident performers are resident in a state with which the Netherlands

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1. For further consideration of these problems, *see* D. Sandler, *The Taxation of International Entertainers and Athletes – All the World's a Stage* (Kluwer L. Intl. 1995); H. Grams, *Artist Taxation: Article 17 of the OECD Model Treaty – A Relic of Primeval Tax Times?*, 27 Intertax 5, p. 188 (1999); D. Molenaar & H. Grams, *Rent-A-Star, The Purpose of Article 17(2) of the OECD Model Treaty*, 56 Bull. Intl. Fiscal Docn. 10 (2002), Journals IBFD; D. Molenaar, *Taxation of International Performing Artistes* (IBFD 2006), Online Books IBFD; *International Taxation of Artistes and Sportsmen* (X. Oberson ed., Schulthess & Bruylant 2009); A. de Juan y Ledesma, *The Artistes and Sportsmen's Article (Article 17 of the OECD Model): Has the Time Come to Stop Counting Stars in the Sky?*, 52 Eur. Taxn. 2 (2012), Journals IBFD; and K. Tetłak, *Taxation of International Sportsmen* (IBFD 2014), Online Books IBFD.
2. Most recently, *OECD Model Tax Convention on Income and on Capital* (26 July 2014), Models IBFD.

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has concluded a tax treaty.[3] In 2011, the Netherlands also adopted this approach in its official treaty policy, which means that the Netherlands endeavours not to include a special clause for performers comparable to article 17 in the new tax treaties that it concludes.

In addition, major sporting events have been impacted by the problems associated with article 17 of the OECD Model. Tax exemptions have been negotiated with host states by various international sporting bodies, such as the International Olympics Committee (IOC) with regard to the Olympics since 2010, the Union of European Football Associations (UEFA) with regard to Champions League finals since 2010, EURO 2012 in Poland and Ukraine, and EURO 2016 in France, as well as the Fédération Internationale de Football Association (FIFA) with regard to the World Cup 2014 in Brazil. The direct reason for this was the significant inconvenience experienced during the 2000 Olympics in Sydney, where all athletes had to file Australian tax returns in respect of income earned in relation to the tournament, despite the fact that most of the athletes did not earn that much. Sporting bodies did not want to encounter such excessive bureaucracy with regard to mostly less well-known athletes and have therefore compelled host states to exempt the athletes (and often other participants) from taxation.

The OECD initiated discussion on article 17 of the OECD Model in 2010, although only technical changes were proposed in the initial Discussion Draft.[4] However, in reactions to the Discussion Draft, the more fundamental question was raised as to whether article 17 should be removed from the OECD Model. The OECD has discussed this for some time, the International Fiscal Association (IFA) has devoted a Seminar to this topic,[5] and the Netherlands has explained to other OECD member countries why it no longer taxes performers from treaty states and that it wishes to omit article 17 from new tax treaties that it concludes.

In the author's opinion, the world would do well without article 17 of the OECD Model for performers. In order to counteract tax avoidance by top stars, a source tax of 15% to 30% of the gross fee in the performance state would suffice and should be waived only when the performer or group, i.e. a company, a team or another production group, can demonstrate residence in a treaty state. As the tax authorities of the residence state would have to countersign the application form for exemption at source, they would be made aware of the foreign income. This would make article 17 of the OECD Model superfluous and should ensure that performers are taxed in accordance with article 7 (companies and self-employed) and article 15 (employees) of the OECD Model.[6]

However, the OECD has decided not to adopt this approach. Rather, the OECD published a special report on entertainers and sportspersons[7] prior to publication of the new Commentary on Article 17 of the OECD Model (2014),[8] stating that it wants to retain article 17. Unfortunately, the OECD used specious arguments, as described by the author in another publication,[9] and disregarded the Dutch arguments for the removal of article 17. In reality, the OECD did not want to resolve the tax problems of international entertainers and sportspersons in one go.

Subsequently, the Netherlands has decided to revert to the official OECD line and change its policy regarding the insertion of article 17 in new tax treaties that it concludes.[10] Nevertheless, the Netherlands has retained a unilateral exemption in its national law for non-residents from treaty states.

3. Options to Restrict the Application of Article 17 of the OECD Model (2014)

The good news is that the OECD officially recognized the problems with article 17 of the OECD Model in the June 2014 Report and has inserted some new options in the Commentary on Article 17 of the OECD Model that restrict the effects of the article. These measures remove the harshest aspects of article 17 for performers in respect of whom it is very clear that they will not avoid taxation but rather will declare their income as normal in their resident state. These optional restrictions are as follows:

(1) article 17 of the OECD Model only applies to the self-employed, whereas article 15 applies to employees;[11]
(2) deduction of expenses and settlement in accordance with the normal rules in the performance state;[12]
(3) a minimum threshold of 15,000 International Monetary Fund (IMF) Special Drawing Rights (SDRs);[13]
(4) an exemption in respect of performances primarily supported by public funds;[14]
(5) an exemption in respect of cross-border competitions;[15] and

3. At the time of the writing of this article, the Netherlands had 94 tax treaties, which it had concluded and were in force.
4. OECD, *Discussion Draft on the Application of Article 17 (Artistes and Sportsmen) of the OECD Model Tax Convention* (OECD 2010), International Organizations' Documentation IBFD.
5. D. Molenaar, M. Tenore & R. Vann, *Red Card Article 17?*, 66 Bull. Intl. Taxn. 3 (2012), Journals IBFD.
6. For further comments, *see*, for example, Grams, *supra* n. 1 and Molenaar, *supra* n. 1.
7. OECD, *Issues Related to Article 17 of the Model Tax Convention* pt. 1.1., para. 5 (OECD 2014).
8. *OECD Model Tax Convention on Income and on Capital: Commentary on Article 17* (26 July 2014), Models IBFD.
9. D. Molenaar, *Entertainers and Sportspersons Following the Updated OECD Model (2014)*, 69 Bull. Intl. Taxn. 1 (2015), Journals IBFD.
10. *See* part II.16 of the explanation (*Kamerstukken* 2012-2013, 33.615, No. 3) on the new *Convention between the Federal Republic of Germany and the Kingdom of the Netherlands for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income* (unofficial translation) (12 Apr. 2013), Treaties IBFD and (*Kamerstukken* 2014-2015, 34.263, No. 3) on the new *Convention between the Netherlands and St. Maarten for the Avoidance of Double Taxation with respect to Taxes on Income* (9 July 2014), Treaties IBFD. In both tax treaties, an exemption in respect of performances primarily supported from public funds was included in art. 17(3), as is usual in most of current tax treaties, which is derived from the option in paragraph 14 of the *OECD Model: Commentary on Article 17* (2014).
11. Para. 1 *OECD Model: Commentary on Article 17* (2014).
12. Id., at para. 10.
13. Id., at paras. 10.1 to 10.4.
14. Id., at para. 14.
15. Id., at para. 14.1.

(6) a restriction on article 17 to the personal companies of performers, i.e. the limited approach in article 17(2).[16]

Option (3), i.e. the minimum threshold of 15,000 IMF SDRs, is discussed in the present article. The author refers to one of his previous articles for a discussion of the other optional restrictions.[17]

4. Example: The *De Minimis* Rule in US Tax Treaties

The minimum threshold has been adopted from article 16 of the US Model. Both the US Model (1996)[18] and the US Model (2006)[19] contain a *de minimis* rule of USD 20,000 per year, under which the performance state does not have the right to tax the income of the entertainer or sportsperson from the other state. Before 1996, lower amounts were used in various US tax treaties, e.g. USD 400 per day in the Egypt-United States Income Tax Treaty (1980),[20] USD 1,500 per year in the India-United States Income Tax Treaty (1989)[21] and USD 3,000 per year in the Philippines-United States Income Tax Treaty (1976).[22] For the Netherlands, the 1996 US Model came too late. In the Netherlands-United States Income Tax Treaty (1992),[23] a minimum amount of USD 10,000 was agreed. The threshold in the US tax treaties includes the reimbursement of expenses and is therefore calculated on the gross fee paid to the performer. When the threshold is exceeded, the entire fee is taxed in the performance state, which means that the amount does not function as a personal allowance but only as a threshold.

When a performer is engaged in a group, i.e. a company, a team or another production group, and the performance fee is paid to the group, the taxing right under article 16(2) of the US Model applies. A payment from the group to the individual performers falls under article 16(1) of the US Model, in respect of which the minimum threshold can be used. This is explained in Example 3.

Example 3

A Belgian theatre group with four actors gives five performances in New York for a total fee of USD 50,000. The group is incorporated as a separate legal entity that employs the four actors and is comparable to a foundation, which does not have shareholders. The performance fee is paid to the legal entity, which is not taxable in the United States because a limited approach is adopted in the equivalent of article 17(2), which means that the payment is only taxable when the performers are the owners of the group.

The actors receive USD 20,000 as salaries from the group, which is also not taxable in the United States because the USD 5,000 per actor falls within the minimum threshold of USD 20,000 per performer per year. But both the group and the actors fall under the normal taxation of their residence state.

The text of article 16(1) of the US Model does not indicate when the minimum threshold should be used, but the accompanying Technical Explanation to the US Model states the following:

> Since it frequently is not possible to know until year-end whether the income an entertainer or sportsman derived from performances in a Contracting State will exceed $20,000, nothing in the Convention precludes that Contracting State from withholding tax during the year and refunding it after the close of the year if the taxability threshold has not been met.[24]

Is this an important element with regard to the practical use of the minimum threshold, i.e. can it be used directly at the performance or should withholding first apply, which can then be refunded after the end of the tax year? An example of such direct use can be seen in the Belgium-United States Income tax Treaty (2006),[25] i.e. a threshold of USD 20,000. In practice, both Belgians and US citizens have no problems applying this threshold directly because this is only possible after approval by the tax authorities in the performance state. Both states have a central office for non-resident performers to which an application can be made.[26] If there are additional performances in the same tax year, the special tax offices know how much of the minimum threshold has already been used in respect of the previous performance and whether it is likely to be exceeded. In contrast to the wording of the Technical Explanation to Article 16 of the US Model, this example demonstrates that it is very possible to know already during the tax year how much of the threshold has been used by a non-resident performer.

The following table indicates that, in 40 tax treaties concluded by the United States, the threshold can be used directly and, in eight tax treaties, the threshold can be used only after the end of the tax year. Some tax treaties do not have a special clause for performers, which means that the normal allocation rules apply, whereas in three treaties there is no *de minimis* rule.

Table: US tax treaties and the *de minimis* rule

State	Year	Article	Threshold (USD)	Application
Armenia	1973	–	–	–
Australia	1982	17	10,000	Direct

16. Id., at para. 16.
17. Molenaar, *supra* n. 9.
18. *US Model Income Tax Convention* (15 Nov. 2006), Models IBFD.
19. *US Model Income Tax Convention* (20 Sept. 1996), Models IBFD.
20. *Convention between the Government of the United States of America and the Government of the Arab Republic of Egypt for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income* (24 Aug. 1980), Treaties IBFD.
21. *Convention between the Government of the United States of America and the Government of the Republic of India for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income* (12 Sept. 1989), Treaties IBFD.
22. *Convention between the Government of the United States of America and the Government of the Republic of the Philippines with respect to Taxes on Income* (1 Oct. 1976), Treaties IBFD.
23. *Convention between the Kingdom of the Netherlands and the United States of America for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income* (18 Dec. 1992), Treaties IBFD.
24. *US Model Income Tax Convention: Technical Explanation to Article 16(1)* (15 Nov. 2006), Models IBFD.
25. *Convention between the Government of the United States of America and the Government of the Kingdom of Belgium for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income* (27 Nov. 2006), Treaties IBFD.
26. In Belgium, this is the *Dienst Directie Buitenland* in Brussels, which has a special team for non-resident performers and, in the United States, this is the Central Withholding Agreement (CWA) Program in Downers Grove, Illinois, which is a suburb of Chicago.

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State	Year	Article	Threshold (USD)	Application
Austria	1996	17	20,000	After
Azerbaijan	1973	–	–	–
Bangladesh	2006	18	10,000	Direct
Barbados	1984	17	4,000	Direct
Belarus	1973	–	–	–
Belgium	2006	16	20,000	Direct
Bulgaria	2007	16	15,000	Direct
Canada	1980	XVI	15,000	Direct
China	1984	16	–	–
Cyprus	1984	19	5,000	Direct
Czech Republic	1993	14	20,000	After
Denmark	2000	17	20,000	Direct
Egypt	1980	17	400 per day	Direct
Estonia	1998	17	20,000	Direct
Finland	1989	17	20,000	Direct
France	1994	17	10,000	Direct
Georgia	1973	–	–	–
Germany	1989	16	20,000	After
Greece	1950	X	10,000	Direct
Hungary	1979	–	–	–
Iceland	2007	16	20,000	Direct
India	1989	18	1,500	Direct
Indonesia	1988	17	2,000	Direct
Ireland	1997	17	20,000	Direct
Israel	1975	18	400 per day	Direct
Italy	1999	17	20,000	Direct
Jamaica	1980	18	5,000	Direct
Japan	2003	16	10,000	Direct
Kazakhstan	1993	–	–	–
Korea (Rep.)	1976	–	–	–
Kyrgyzstan	1973	–	–	–
Latvia	1998	17	20,000	Direct
Lithuania	1998	17	20,000	Direct
Luxembourg	1996	18	10,000	Direct
Malta	2008	16	20,000	Direct
Mexico	1992	18	3,000	After
Moldova	1973	–	–	–
Morocco	1977	16	–	–
Netherlands	1992	18	10,000	After
New Zealand	1982	17	10,000	Direct
Norway	1971	13	3,000	Direct
Pakistan	1957	–	–	–
Philippines	1976	17	3,000	Direct
Poland	1974	–	–	–
Portugal	1994	19	10,000	Direct
Romania	1973	14	3,000	Direct
Russia	1992	–	–	–
Slovak Republic	1993	18	20,000	After
Slovenia	1999	17	15,000	Direct
South Africa	1997	16	7,500	Direct
Spain	1990	19	10,000	After
Sri Lanka	1985	18	6,000	Direct
Sweden	1994	18	6,000	Direct
Switzerland	1996	17	10,000	After
Tajikistan	1973	–	–	–
Thailand	1996	19	3,000	Direct
Trinidad	1970	17	100 per day	Direct
Tunisia	1985	17	7,500	Direct
Turkey	1996	17	3,000	Direct
Turkmenistan	1973	–	–	–
Ukraine	1994	17	–	–
United Kingdom	2001	16	20,000	Direct
Uzbekistan	1973	–	–	–
Venezuela	1999	18	6,000	Direct

The conclusion that can be drawn from the Table is that the United States has included a minimum threshold in 94% of its tax treaties with a special clause for performers. In 83% of these tax treaties the threshold can be used directly, whereas in 17% of these tax treaties the threshold can be used only after the end of the tax year.

Unfortunately, the United States has not increased the USD 20,000 threshold since 1996. When inflation from the past 20 years is taken into account, increasing the threshold to USD 35,000 would appear to be reasonable.

5. Minimum Threshold in the Commentary on Article 17 of the OECD Model (2014)

The OECD inserted a minimum threshold for the first time in the Commentary on Article 17 of the OECD Model (2014). This is stated in paragraphs 10.1 to 10.4 of the OECD Commentary on Article 17 (2014) as an option that states can include in their tax treaties. This threshold was not included in the OECD Discussion Draft of 2010 but was added during the consultation process. The threshold is set at 15,000 IMF SDRs per performer per year. At current exchange rates, this is equivalent to approximately EUR 19,400, USD 20,700 and GBP 13,500. Under this amount, a performer cannot be taxed in the performance state, which means that the taxing right only applies to the performance state when the threshold is exceeded. The OECD has provided the following text proposal that states can include in article 17 of their new tax treaties:

> Notwithstanding the provisions of Article 15, income derived by a resident of a Contracting State as an entertainer, such as a theatre, motion picture, radio, or television artiste, or a musician, or as a sportsperson, from his personal activities as such exercised in the other Contracting State, may be taxed in that other State, except where the gross amount of such income derived by that resident

> from these activities exercised during a taxation year of the other Contracting State does not exceed an amount equivalent to [15 000 IMF Special Drawing Rights] expressed in the currency of that other State at the beginning of that taxation year or any other amount agreed to by the competent authorities before, and with respect to, that taxation year.

The threshold of 15,000 IMF SDRs is not a fixed amount for the OECD, but rather an example. States can include a different fixed amount in their tax treaties or can even use a dynamic definition by which the amount can be adjusted annually. Such a dynamic approach negates the argument against the fixed *de minimis* amount as noted at the end of section 4.

The OECD provides an example of such a dynamic definition in the Commentary on Article 17 of the OECD Model to the effect that the annual amount can be determined by a formula such as "50 per cent of the average GDP per capita for OECD countries, as determined by the OECD".[27] This average GDP for the OECD member countries was USD 38,867 in 2014, which means that the threshold could be set at 50%, i.e. USD 19,434 for 2016.[28] This is comparable to the USD 20,000 which the US Model uses.

However, it is very different from the USD 20,000 which the United States introduced in 1996 and has used ever since. The average GDP for the OECD member countries was USD 20,960 in 1996, which means that the United States set the *de minimis* amount at the level of the OECD average GDP for that year. Following this line of reasoning, it would be logical to stop using 50% of the OECD average GDP in favour of 100% of the OECD average GDP as the dynamic definition in article 17(1) of the OECD Model, which would be a minimum threshold of USD 38,867 as at 1 January 2016.[29]

6. Unilateral National Solutions for Less Well-Known Performers

Some states also have their own thresholds in their national income tax laws to assist lesser-known performers. Examples include:

- the Netherlands, which has a fixed deduction in respect of expenses of EUR 163 per person per performance;[30]
- Belgium, which has a *forfait* for expenses of EUR 400 per person for the first performance and EUR 100 for subsequent performances with the same promoter up to a maximum of nine performances;[31]
- Germany, which has a threshold of EUR 250 per person per performance, but this only applies when the income is lower and not when the threshold is exceeded, which means that for a fee of EUR 251 the full amount is taxed at a rate of 15.825%;[32] and
- the United Kingdom, which has a general personal allowance of GBP 10,600 per year for non-residents in respect of tax year 2015-2016 that can be used at the time of the performance when an application for a reduced tax rate is filed with the Foreign Entertainers Unit (FEU),[33] which is a special office of Her Majesty's Revenue & Customs (HMRC).

By way of these unilateral deductions and exemptions, these states try to remove lesser-known performers from source taxation as much as possible so that they incur as little administrative expense as possible in avoiding double taxation. But this is only done by a few states with very different rules.

7. Summary and Conclusions

The special taxing rules in article 17 of the OECD Model can easily result in double taxation and relatively high administrative expenses, especially for lesser-known entertainers and sportspersons. The OECD did not want to delete article 17 from the OECD Model, but it has proposed new options to restrict application of this article in the Commentary on Article 17 of the OECD Model (2014). Especially for lesser-known performers, the USD 20,000 *de minimis* rule (from the US Model) has been adopted. As a result, states can insert a minimum threshold into the tax treaties that they conclude, under which performers are not taxed in the performance state. The OECD has proposed that the fixed amount be 15,000 IMF SDRs (EUR 19,400 at the applicable exchange rate at the time of the writing of this article) but has also made the interesting suggestion to make this amount variable and set at the annual average of 50% of the average GDP per capita for OECD member countries (approximately USD 20,000 at the time of the writing of this article). This means that it can follow income growth and be adjusted over the years.

Compared with the USD 20,000 amount that the United States has used since 1996, a reference to 100% of GDP for the OECD member countries appears to be fairer to lesser-known performers, as this amount would be almost USD 40,000 in 2016. Such performers are not top stars who try to evade taxation by moving to tax havens and, therefore, do not have to be subject to strict tax measures and can be exempted at source by way of a minimum threshold. In this context, it is very important that the minimum threshold can be used directly at the time of the performance and not only after the end

27. Para. 10.2 *OECD Model: Commentary on Article 17* (2014).
28. EUR 17,889 and GBP 13,152 at the exchange rates applicable in Jan. 2016.
29. This would be to move more in the direction of the *de minimis* amount of USD 100,000 which, in 2007, was proposed by D. Sandler, *Source Versus Residence: Problems Arising from the Allocation of Taxing Rights*, in *Tax Treaty Law and Possible Alternatives* (M. Lang ed., Wolters Kluwer 2008 and Taxmann 2008).
30. Art. 12a(7) and 35a(4) NL: *Uitvoeringsbesluit loonbeslasting* (Implementing Decree Wage Withholding). This is only necessary for performers from non-treaty states, as they cannot make use of the unilateral exemption from arts. 5a(1)(b) and 5b(1)(2) of the NL: *Wet op de loonbelasting* (Wage Withholding Tax Law (1964).
31. Attachment 3, pt. 75 BE: *Koninklijk Besluit tot uitvoering van het Wetboek van de inkomstenbelastingen* (Royal Decree for Implementation of Income Tax Law).
32. DE: Income Tax Law (*Einkommensteuergesetz*), §50a.
33. The FEU is based in Liverpool, United Kingdom.

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of the tax year in a refund procedure; otherwise, the risk of double taxation would increase instead of being reduced.

The minimum threshold is a good measure for states to support their lesser-known entertainers and sportspersons when performing abroad. A threshold of USD 20,000, USD 40,000 or a dynamic amount could be added to the treaty policy of every state, as has happened over the past 20 years with article 17(3) of the OECD Model, i.e. the clause for subsidized performers. The optional restriction in the Commentary of the OECD Model[34] is now part of 66% of tax treaties, while some states have included it in almost all of the tax treaties that they have concluded.[35] With a minimum threshold stipulated in their tax treaties, states also remain within the official OECD policy. The OECD has provided proposed text in the Commentary on Article 17 of the OECD Model (2014),[36] but it would be even better if the OECD proposal for a dynamic definition of the minimum threshold was actively used. And preferably, the minimum threshold could be inserted into the official text of article 17(1) in the next update of the OECD Model to make it equivalent to the US Model, but with a dynamic definition.

The OECD Model is a good example for states on how to allocate taxing rights and is helpful in countering tax avoidance, but states must be aware that excessive and double taxation should be avoided as much as possible. With the minimum threshold, states will achieve this for lesser-known entertainers and sportspersons, making it beneficial to start using the option found in the Commentary on Article 17 of the OECD Model.

34. Para. 14 *OECD Model: Commentary on Article 17* (2014).
35. For more on this, *see* D. Molenaar, *Article 17(3) for Artistes and Sportsmen: Much More than an Exception*, 40 Intertax 4, p. 270 (2012).
36. Para. 10.1 *OECD Model: Commentary on Article 17* (2014).

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