INTERNATIONAL

Obstacles for International Performing Artists

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1. INTRODUCTION

International performing artists are subject to special tax treatment. Many countries levy a withholding tax from their performance fees, even when the artists are self-employed, their fees are business income and the artists 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 artists is allocated to the country of performance. The OECD supports the general rule in Art. 17 of its Model Tax Convention (OECD Model) for both self-employed artists as well as employees. According to the 1987 OECD report[1] the rule can be seen as an anti-avoidance measure to prevent (1) highly mobile artists who pretend to live in tax havens from taking the gross self-employed income with them without paying tax in any country and (2) artists from not reporting the foreign income in their home country. Taxation at source sounds reasonable in order to ensure that every artist pays his share of his earnings to the government, although some authors question whether this system is still necessary in modern times.[2]

The 1987 OECD report suggests that artists (and sportsmen) are not trustworthy. It states that "sophisticated tax avoidance schemes, many involving the use of tax havens, are frequently employed by top-ranking artistes and athletes" and "there is a tendency to be represented by adventurous but not very good accountants". The report concludes that "there is a general agreement that where a category of – usually well-known – taxpayers can avoid paying taxes this is harmful to the general tax climate". This means, in other words, that artists (or sportsmen) have been singled out to be used as an example for the rest of the tax world. This picture of artists trying to escape normal taxation has been reinforced, for example, by artists such as Luciano Pavarotti, the famous Italian opera singer, who pretended to live in Monte Carlo but ended up paying ITL 25 billion in Italy after court cases in two instances.[3] Further, Sting performed in Canada and used a personal holding company called Roxanne Inc. to try to bring offshore a part of his Canadian performance income.[4] In publications[5] and discussions[6] over the years the validity of this opinion about artists has been questioned.

Unfortunately, these examples only apply to the top artists. Most artists are not so famous and rich that they fall under the categorizations of the 1987 OECD report. They are just normal people who live in normal cities in normal houses with their families, and report their foreign income in their normal income tax return at the end of the year in their home country. It will be demonstrated below that without a doubt they suffer from the lack of trust that government officials have in artists.

The actual withholding tax rules that countries have implemented as a consequence of the anti-avoidance treaty rule are often very onerous.[7] Production expenses are not deductible at source[8] and foreign artists are precluded from filing a normal annual tax return in the source country. This leads to international excessive taxation, because a part of the withholding tax in the country of performance cannot be credited against income tax in the home country.[9] Examples will be given in 2.

In some countries the artist withholding tax is so high that foreign artists decide not to perform there. For example, in Germany, the Minister of Culture stated in a press release that after the tax increase for foreign artists in 1996 the number of performances went down by 33%.[10] In Germany the artist withholding tax works as a protection for domestic artists and keeps foreign artists from the local market. Within the European Union such an obstacle violates the fundamental freedoms protected by the EC Treaty.

This problem has not yet been recognized within the European Union. In 1999 the European Commissioner Frits Bolkestein expressed in his answers to questions raised by a member of the European Parliament, Ian White, that the German artist tax system was in accordance with the requirements of the non-discrimination principle.[11] The following paragraphs will show that these answers were incorrect.

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1. "Taxation of Entertainers, Artistes and Sportsmen", in *Issues in International Taxation* No. 2 (Paris: OECD, 1987).
2. See the critique of Art. 17 of the OECD Model by Harald Grams, "Artist Taxation: Art. 17 of the OECD Model Treaty – a relic of Primeval Tax Times?", 27 *Intertax* (1999), pp. 188-193 and that of Joel A. Nitikman, "Article 17 of the OECD Model Treaty – An Anachronism?", 29 *Intertax* (2001), pp. 268-274.
3. Carmine Rotondaro, "The *Pavarotti* Case", 40 *European Taxation* 8 (2000), pp. 385-391.
4. *Sumner v. R.,* 7 December 1999, 2000 *D.T.C.* 1667, [2000] 2 *C.T.C.* 2359.
5. Daniel Sandler, *The Taxation of International Entertainers and Athletes, All the World's a Stage* (The Hague: Kluwer Law International, 1995).
6. Seminar D of the 49th IFA Congress in Cannes, *Cahiers de droit fiscal international*, Vol. 20d (The Hague: Kluwer Law International, 1995).
7. See Risto Rytöhonka, "Taxation of Non-Resident Artists' Income: Decision of the Supreme Administrative Court of 29 January 2001" 41 *European Taxation* 9 (2001), pp. 344-345.
8. This is supported by Subpara. 10 of the Commentary on Art. 17 of the OECD Model.
9. This was also mentioned in Seminar D at the IFA Congress in Cannes in 1995 in the overview by Prof. Daniel Sandler and at the end of the discussion by Dr Jürgen Kilius and Toshio Miyatake. See note 6.
10. *Handelsblatt* 22 February 2001.
11. 40 *European Taxation* 8 (2000), p. EC-28.

In 2. this article will give three examples of the international excessive taxation of performing artists; in 3. expenses at source will be discussed; in 4. the withholding tax rates are compared with normal income tax rates; in 5. the possibility of filing a normal income tax return is supported and in 6. the distortion of competition is examined.

2. EXAMPLES

The international excessive taxation of artists can be illustrated through concrete examples. The following three examples will show the extent of the problem.

2.1. Small artist with few expenses

A Belgian singer is performing five days in the Netherlands. His fee is EUR 2,000 and his direct expenses are EUR 500. The withholding tax in the Netherlands is 20% from the gross fee, without taking the expenses into consideration. Therefore, EUR 400 tax is to be withheld from the fee, which is effectively 27% of the profit of EUR 1,500.

In Belgium, the foreign earnings and expenses are reported as part of the singer's worldwide income and a total taxable income of EUR 15,000 remains. This leads, after personal allowances, to EUR 3,176 of income tax, which is an average rate of 21% of the taxable income. Foreign tax can be credited in Belgium but only up to a maximum of the average tax rate. The tax credit therefore is a maximum of 21% x EUR 1,500 = EUR 315. An excess of taxation of EUR 85 results as EUR 400 was withheld.

2.2. Medium artist with moderate expenses

A German artist is performing five shows in Spain. He is not very famous but can make a living from his performances. His fees are EUR 20,000 and his direct expenses are EUR 10,000. The withholding tax in Spain is 25% from the gross fee, without taking production expenses into consideration. Therefore EUR 5,000 is withheld, which is effectively 50% of the profit of EUR 10,000.

In Germany, the foreign earnings and expenses are reported in the artist's income tax return as part of his worldwide income and a total taxable income of EUR 50,000 remains. This leads, after personal allowances, to EUR 16,000 of income tax, on average 32% of the taxable income. Foreign tax can be credited in Germany but only up to a maximum of the average tax rate. The tax credit, therefore, is a maximum of 32% x EUR 10,000 = EUR 3,200. An excess of taxation of EUR 1,800 results as EUR 5,000 was withheld.

2.3. Big artist with high expenses

A major English artist is performing two shows in Germany. His fee is EUR 150,000 and his direct expenses are EUR 105,000. The withholding tax in Germany is 25% + surcharges = 29% from the gross fee, without taking production expenses into consideration. Therefore, EUR 43,500 is withheld, which is effectively 96% of the EUR 45,000 profit.

In the United Kingdom, the foreign earnings and expenses are reported as part of the artist's worldwide income and a total taxable income of EUR 300,000 remains. This leads, after personal allowances, to EUR 108,000 of income tax, which is on average 36% of the taxable income. Foreign tax can be credited in the United Kingdom but only up to a maximum of the average tax rate. The tax credit, therefore, is a maximum of 36% x EUR 45,000 = EUR 16,200. An excess of taxation of EUR 27,300 results as EUR 43,500 was withheld.

These figures can be summarized as follows (in euros):

Artist Expenses	small few	medium moderate	big high
gross fee in country of performance	2,000	20,000	150,000
expenses for performance	– 500	– 10,000	– 105,000
profit	1,500	10,000	45,000
withholding tax rate (from gross fee)	20%	25%	29%
withholding tax	400	5,000	43,500
effective tax rate (on profit)	26%	50%	96%
worldwide income in home country	15,000	50,000	300,000
total tax in home country	3,176	16,000	108,000
average tax rate in home country	21%	32%	36%
maximum tax credit in home country	315	3,200	16,200
international excess of taxation	– 85	– 1,800	– 27,300

3. DEDUCTION OF EXPENSES AT SOURCE

In subpara. 10 of the official Commentary on Art. 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." The OECD does not want to provide rules for the deduction of expenses, although, in practice, the amount of expenses significantly influences the effective tax rate at source, as we have seen in the examples. Many countries tax on the gross amount, but keep the withholding tax rate high to avoid artists (or sportsmen) with few expenses from getting away with low taxation.

At the IFA Congress in Cannes in 1995 Prof. Daniel Sandler[12] expressed in his overview of Seminar D that it can be problematic to compute the expenses for performances, but also admitted that the manner in which source countries deal with expenses can lead to excessive taxation of global income.

12. See note 6.

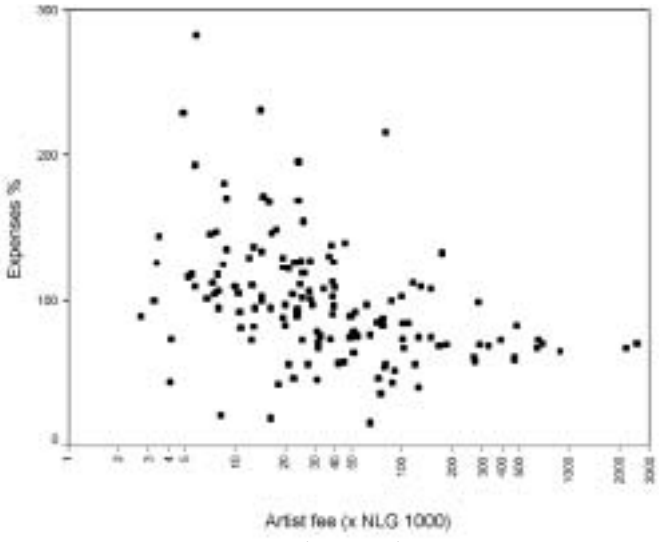
The non-deductibility of expenses is an important obstacle. Production expenses for big international artists can be high. Normal expenses for artists on the road include agency fees, management commissions, lawyer fees, business manager fees, local tax adviser fees, the cost of sound and light equipment, flights, transport, tour personnel, stage sets, video, security, etc. A Netherlands survey[13] of 150 foreign artists and groups in the first eight months of 2001 proves the reality of the 70% expense amount in example C. The results were as follows:

number of performances: 150

gross fees	7,330,638	100%
production expenses	– 5,592,120	– 76%
profit / artist income	1,738,518	24%

In two figures the results are shown. Figure 1 shows the percentages of expenses on differing gross fees. The conclusion is that examples like 2.3. seem quite normal for big earners. Further, smaller artists seem to have an even higher percentage of expenses. Figure 2 shows the number of artists who experience the different percentages of expenses. The vast majority of artists have production expenses of more than 70% and a considerable number of artists have more expenses than earnings from their performances.

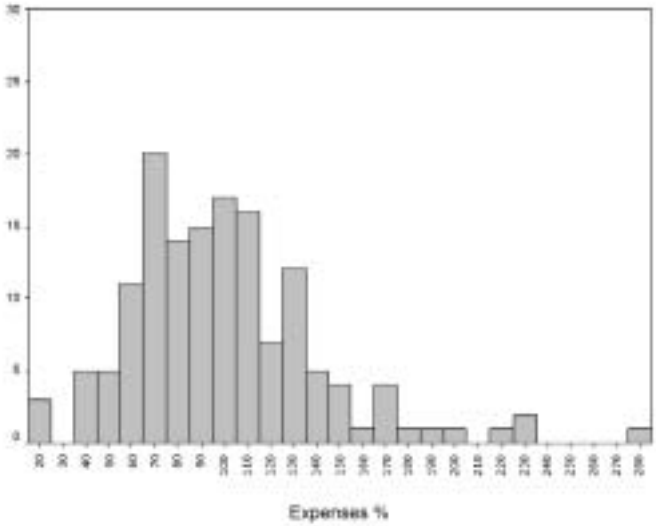
Figure 1



These figures were confirmed in Sting's case.[14] The expenses (excluding Sting's salary) for the six performances in Canada amounted to 79% of the earnings.

The United Kingdom and the Netherlands have introduced a system whereby a deduction for expenses at source is allowed**.** The United Kingdom set up the Foreign Entertainer's Unit (FEU) in 1986. A foreign artist or his representative can send a budget of production expenses for approval to the FEU prior to a performance or tour. The Netherlands changed their artist taxation rules effective January 2001. The new rules allow foreign artists to apply for a tax ruling on expenses from a special tax unit for foreigners. Both countries have good experience 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 leaves only the artist's real income subject to withholding tax.

Figure 2



The United Kingdom and the Netherlands have also created a minimum threshold per performance, under which expenses do not have to be specified. In the United Kingdom the amount is GBP 1,000 (EUR 1,636) per group per show. In the Netherlands the amount is EUR 136 per person per show for which no budget has to be submitted; up to this amount the fee is considered to be production expenses.

The US model treaty also has a threshold for lower artist fees. In Art. 17(1) of this model the taxing right is allocated to the country of performance unless the gross income in the taxable year does not exceed USD 20,000 or its equivalent. Most of the US treaties have been drawn up according to this model, although the *de minimis* rule in treaties with smaller countries is set at a lower amount.[15] Prof. Daniel Sandler supported this exception to the US model treaty in his overview of Seminar D during the IFA Congress in 1995.[16] Germany changed its strict artist tax rules effective 1 January 2002 under heavy pressure from the cultural world and members of parliament. It introduced a bracket system with reduced tax rates for fees under EUR 1,000 per person per performance. Unfortunately, medium and bigger artists are not helped by this change; however the cultural world accepts it as a first step forward.

The artist taxation systems in the United Kingdom and the Netherlands show that it is possible to allow deductions

13. Survey from September 2001 of tax administration applications, done by All Arts Tax Advisers for the German Cultural Council published in the *Berliner Zeitung* of 24 October 2001, and other newspapers.
14. See note 4.
15. Belgium: USD 3,000, the Netherlands: USD 10,000 per year.
16. See note 6.

for estimated production expenses in advance of a performance or tour. As a result of this system foreign artists performing in the United Kingdom and the Netherlands do not need to experience excessive taxation. The US model treaty, as a rule, protects the smaller performing artists and the short-term performances, as does the German artist tax law after the 2002 change. The OECD Commentary can be modernized and can recommend both these systems as best practice examples, leaving the anti-avoidance measure effective only for the top artists.

4. LOW TAX RATE

The artist withholding tax rates vary from 18% in Belgium, 23% in the United Kingdom, 29% (including surcharges) in Germany to 30% in the United States. Can we consider these rates as low tax rates? Compared to the normal progressive tax rates that go up to 55% in Belgium, 40% in the United Kingdom, 53% in Germany and 40% in the United States these artist withholding tax rates seem to be low. But as an average flat rate they are relatively high as they have to be compared to the average rate of normal income tax. Average tax rates are obviously much lower than the top progressive rates. In addition, when the non-deductibility of expenses for artists is taken into account, the effective withholding tax rate for artists can be even higher than the normal marginal income tax rate.

At the end of Seminar D during the 49th IFA Congress in Cannes[17] this issue was also discussed. The chairman, Dr Jürgen Kilius (Germany), finally stated that foreign artists are often paying more tax in the foreign country than they would if they were taxed as ordinary residents in their home country.

At what break-even point (taxable income) (BEP) does the flat artist tax rate equal the average progressive income tax rate? I have calculated this for four different countries, at an average rate of 18% and 29%, respectively, using the tax tables for the year 2000. Also, included in the calculations is the effect of the non-deductibility of expenses in the country of performance at a supposed (low) level of 50%.

Break-even point (taxable income)

Home country	Average income tax rate 18%	29%
Belgium (no expenses)	EUR 12,835	EUR 22,720
Belgium (with 50% expenses in foreign income)	EUR 37,389	no BEP
Germany (without expenses)	EUR 18,757	EUR 41,527
Germany (with 50% expenses in foreign income)	EUR 62,414	no BEP
United Kingdom (without expenses)	GBP 28,679	GBP 64,076
United Kingdom (with 50% expenses in foreign income)	GBP 176,205	no BEP
USA (without expenses)	USD 34,124	USD 170,702
USA (with 50% expenses in foreign income)	USD 587,070	no BEP

The conclusion can be drawn that the artist withholding tax rates in different countries seem to be low but that in practice they are very high. When no deduction for expenses is needed to reduce income tax in the home country, the flat withholding rates could meet the average income tax rates to a certain extent, but only at a relatively high income. The small and medium artists are worse off anyway.

This, in combination with the fact that many countries deduct the artist withholding tax from gross fees and do not allow deductions for production expenses at source, leads to the conclusion that the average income tax rate only equals a foreign flat withholding rate of 18% at a very high income level and that a break-even point for a foreign flat withholding rate of 29% cannot even be calculated. In this realistic situation "the artists pay more tax than millionaires".[18]

5. NORMAL INCOME TAX RETURN IN SOURCE COUNTRY

Most countries do not allow foreign artists to file a normal income tax return at the end of the taxable year. Administrative reasons are given for this practice; it is assumed to be difficult to ensure that foreign artists can be found and registered, and that they actually file their tax returns. The simple and final withholding tax avoids subsequent administrative work.

Sometimes foreign artists are given the opportunity to file a limited income tax return. For example, in Germany a simple form (*Vereinfachtes Erstattungsverfahren*) has been introduced pursuant to which the artist can report his earnings and expenses after the year. The remaining profit is taxed at a flat income tax rate of 50% (plus surcharges). In practice this simple form is not used very often because of the administrative difficulties that arise with respect to original invoices and questions of the tax office (*Bundesamt für Finanzen*) and because of the high tax rate on the profit compared to the normal income tax rates.

On 25 April 2000 the Lower Court of Amsterdam[19] ruled on this issue in a case involving a Belgian actor who performed in the Netherlands for short periods in 1996. The Netherlands withholding tax in that year was 25% after deducting 25% for deemed expenses. This resulted in a withholding tax rate of 18.75%, which was final as it was an individual contract for a period of less than three months. In this situation it was not possible to file a normal income tax return. The tax inspector defended this rule by pointing to the official guideline from 1970 that stated that foreign artists are not easy to locate and that it is more efficient to only levy a withholding tax than to bring the foreign artists under the normal income tax system. The Lower Court of Amsterdam decided that the principle of non-discrimination had been breached as a result of this

17. See note 6.
18. "Auswärtige Künstler zahlen mehr Steuern als Millionäre", *Berliner Zeitung* of 24 October 2001.
19. Lower Court of Amsterdam (*Gerechtshof Amsterdam*), 25 April 2000, *Infobulletin* 2000/489, BNB 2000/369.

exclusion from the income tax law. The court referred, in part, to Arts. 48 and 52 of the EC Treaty. The Belgian actor was allowed to declare his income normally, subject to the usual income tax rates. He received a tax refund because the withholding tax exceeded the calculated income tax.

A similar case is now pending before the Finance Court of Berlin (*Finanzgericht Berlin*). A Netherlands drummer performed for a few days in 1996 for a radio station in Berlin for a gross fee of DEM 6,000 (EUR 3,068). His travel, lodging and other expenses were DEM 1,000 (EUR 512), which left him a profit of DEM 5,000 (EUR 2,556). Unfortunately for him Germany withholds artist tax from the gross fee at a rate of 25% plus surcharges (i.e. the solidarity tax), which increases the effective rate to 29%. Therefore, DEM 1,740 (EUR 889) was deducted from the artist fee. The drummer wanted to file a normal income tax return after the year to deduct his expenses and to make use of the lower income tax rates. However, the German Income Tax Law (*Einkommensteuergesetz*) excludes the income of foreign artists with short-term contracts from final income tax settlement and, therefore, his tax return was rejected. In July 1999 this case was brought before the Finance Court of Berlin. On 28 May 2001[20] the court requested a preliminary ruling from the Court of Justice of the European Communities (ECJ). A decision is anticipated before the end of 2002.

International artists are, in most cases, normal citizens of their home country. They live in normal houses, in normal cities, with (or without) family and friends. They can be located as easily as other taxable persons and fall under the normal income tax rules of their home country. Maybe the big stars are more difficult to trace but they represent a very small proportion of the performing artists in the world. It seems unfair that countries still exclude foreign artists from a normal income tax settlement (and deduct disproportionate withholding taxes) based on administrative simplicity and efficiency.

It is feared that if artists have the possibility of an income tax settlement in the source country, they may pay less global income tax. The assumption is that they will split their income by dividing it over different territories, making use of the lower progressive tax rates in each country. The idea that artists could be undertaxed is questionable.[21] The OECD Model has taken away this possible advantage by advising Member countries to use the tax credit method of Art. 23B for the income of artists that falls under the scope of Art. 17.[22] Eventual lower taxation in the source state is thus compensated by an equally lower tax credit in the home state. A normal income tax return can also be made optional, as the Netherlands chose to do from the year 2002.

6. NON-DISCRIMINATION AND DISTORTION OF COMPETITION

The OECD has already known for years that the special tax treatment of artists causes difficulties. In its 1987 report[23] the OECD concluded that "differences in treatment regarding taxation distort competition and produce claims for a harmonized system whereby resident and non-resident artists and athletes would be treated alike and pay the same tax". Setting aside the threat of tax avoidance schemes by the top artists, the OECD argues that "there is a feeling that counteracting tax avoidance and evasion in this area should preferably use ways and means which would not divorce the artiste or athlete from the main categories of taxpayers to which they belong, i.e. providers of dependent and independent services". This was an interesting objective 14 years ago, but unfortunately no realistic follow-up has occurred.

Non-discrimination is an important issue within the European Union. There is no harmonization of direct taxation among the Member States; every country seems to be allowed to set up its income tax law according to its own wishes. But this room is limited by the EC Treaty, which upholds the fundamental freedoms, i.e. the free movement of persons, capital and services and the freedom of establishment. The EC Treaty obliges domestic tax authorities not to discriminate against foreigners in comparison to domestic taxable persons, when they are in equal positions. It is entirely legitimate for a Member State to protect itself against possible loss of tax revenue, e.g. by levying a withholding tax. According to the proportionality principle, however, the withholding tax can only be charged to the foreigner based on an estimate of the extent of his likely tax liability and on equal terms with residents.[24]

Residents are normally subject to payroll tax (as employees) or fall under an advance income tax payment scheme (as self-employed individuals), based on their estimated taxable income over the course of the year. In both situations expenses are already taken into account; the payroll tax and advance payments try to come close to the final tax obligation. In contrast, the artiste withholding tax system that is effective in most countries is roughly drawn. Given the circumstances, i.e. the inability to deduct expenses at source and the utilization of a flat withholding tax rate, it is unlikely that the withholding tax amount will compare to the final income tax liability. Precluding foreign artists from filing a final income tax return makes this even less likely.

The ECJ decided in a series of cases that the fundamental freedoms apply in many more situations than Member States supposed. Foreign artists can profit from the influence of the EC Treaty in respect of domestic income tax legislation. Decisions like *Avoir fiscal*[25] (refunds for foreigners), *Baxter et al.*[26] (deductions for expenses), *Biehl*[27]

20. Finance Court of Berlin, 28 May 2001, 9 K 9312/99, *Internationales Steuerrecht* 14/2001, pp. 443-446, with comment by Dr Harald Grams and Dick Molenaar.
21. Prof. Daniel Sandler mentioned this possible undertaxation in his overview of Seminar D of the 49th IFA Congress in Cannes, 1995. See note 6.
22. According to para. 12 of the OECD Commentary on Art. 17.
23. See note 1, subparas. 60-63.
24. See Prof. Erik Werlauff, "Remedies Available to Individuals under EC Law against Discriminatory National Laws", 39 *European Taxation* 12 (1999), pp. 475-483.
25. ECJ, 28 January 1986, Case 270/83, *Commission v. French Republic (Avoir fiscal)* [1986] ECR 273.
26. ECJ, 8 July 1999, Case C-254/97, *Baxter et al.* [1999] ECR I-4809.
27. ECJ, 8 May 1990, Case C-175/88, *Biehl-I* [1990] ECR I-1779, and ECJ, 26 October 1995, Case C-151/94, *Biehl-II* [1995] ECR I-3685.

(normal income tax settlement) and *Asscher*[28] (no higher tax rate for foreigners) uphold non-discrimination. The preliminary questions referred by the Finance Court of Berlin to the ECJ,[29] mentioned in 5. of this article, are very interesting for artists within the European Union. Not only is the preclusion from filing a normal income tax return after the year questioned, the Finance Court of Berlin has broadened the issue by also raising the question as to whether it is right for a foreign artist to be taxed at the withholding stage at a rate of 25% (plus surcharges) from his gross fee. As many countries in the European Union employ both elements in their artist tax rules, the ECJ's answers to these questions may either confirm the deviant treatment of artists or force countries to change their attitude towards foreign performing artists.

7. CONCLUSION AND SUMMARY

International artists who are contracted for shorter periods are, in various countries, taxed differently from normal taxable persons. Their gross income is taxed at source at a flat rate, no deduction for expenses is allowed at the withholding stage and no normal income tax settlement after the year is possible on the basis of administrative efficiency. Artists suffer from this special treatment, because the withholding tax in the source state often turns out to be higher than the tax credit that can be received in the home country. This may lead to considerable excessive taxation, which has been demonstrated in the three examples in 2. of this article. The assumed low flat withholding rates in the country of performance are actually very high in comparison to the average rate of income tax in the home country.

The United Kingdom and the Netherlands are best practice examples of how the foreign artist tax system can be changed into a modern and fair system. Both countries allow foreigners to apply for a tax ruling in advance of the performance based on a budget of estimated expenses and allow a deduction for these expenses at source. They also assume that up to a certain threshold fees for performances are considered to be equal deductible expenses. At the end of the taxable year both countries also allow foreign artists to file a normal income tax return to settle their tax liability at the normal income tax rates. In addition, the United States, with its model treaty, is a good example of how smaller artists can be assisted. The *de minimis* rule of USD 20,000 provides an important tax waiver.

The OECD had already expressed its concern regarding discrimination against international artists in 1987 but gave more priority to the anti-avoidance measures for the top artists. They seem to have silently accepted that the smaller artists suffer from these heavy measures. Is this acceptable? The preliminary ruling requested from the ECJ concerning the German artist tax system emphasizes the international issue for foreign artists. Following earlier decisions of the ECJ, the world of international artists is curious what the answers will be to the question (1) as to whether a withholding tax rate of 25% (plus surcharges) on gross income without taking production expenses into account is acceptable and (2) as to whether foreign artists can be excluded from a normal income tax settlement after the year. A favourable outcome may remove for artists the obstacles to entering into the markets in other (European) countries.

28. ECJ, 27 June 1996, Case C-107/94, *Asscher v. Staatssecretaris van Financiën* [1996] ECR I-3089.
29. See note 20.