

Karolina Tetlak

Taxation of International Sportsmen

IBFD DOCTORAL SERIES

30

Taxation of International Sportsmen

Why this book?

This book analyses the tax treatment of income received from participation in international sports competition and the extent to which double tax treaty provisions based on article 17 of the OECD Model Tax Convention can be used to regulate the taxation of international sportsmen in the context of sports mega-events.

The current rules of international law relating to the taxation of income of sportsmen do not fulfil their functions in the context of international sports mega-events. Indeed, fiscal measures developed in the current practice of organizing major sports tournaments are inconsistent and often incompatible with the general principles of international law and domestic law of the host countries. In particular, comparative research shows that despite the right to tax foreign sportsmen, host countries of the Olympic Games and football championships are increasingly ready to exempt the champions from income tax under one-off tax regimes.

Taxation of International Sportsmen provides a detailed analysis of the tax breaks offered to non-resident players to supplement or even replace article 17 of the OECD Model and national law based on it. The book also provides an insight into why such alternative measures are adopted and whether article 17 could be changed to meet the requirements of today's championships.

Title:	Taxation of International Sportsmen
Author(s):	Karolina Tetlak
Date of publication:	July 2014
ISBN:	978-90-8722-239-0
Type of publication:	Print
Number of pages:	350
Terms:	Shipping fees apply. Shipping information is available on our website
Price:	EUR 120 / USD 155 (VAT excl.)

Order information

To order the book, please visit www.ibfd.org/IBFD-Products/shop. You can purchase a copy of the book by means of your credit card, or on the basis of an invoice. Our books encompass a wide variety of topics, and are available in one or more of the following formats:

- IBFD Print books
- IBFD eBooks – downloadable on a variety of electronic devices
- IBFD Online books – accessible online through the IBFD Tax Research Platform



IBFD, Your Portal to Cross-Border Tax Expertise

Table of contents

Acknowledgements	vii
Introduction	1
Chapter 1: Historical Background and Legal and Organizational Framework for Earning Income from Sports	9
1.1. Historical background of earning income from participation in sports	9
1.1.1. Funding ancient sportsmen	9
1.1.2. Awards	11
1.1.3. Benefits from third parties	15
1.1.4. Sponsorship and advertising income	16
1.1.5. Employment income	17
1.2. Historical background and organizational framework of modern sporting events	17
1.2.1. Olympic Games	17
1.2.2. FIFA World Cup and UEFA tournaments	22
1.3. General legal framework for the taxation of foreign income	25
1.3.1. International aspects of income taxation	25
1.3.2. Characteristics and application of double tax treaties	28
1.3.3. The genesis of the tax treatment of sportsmen under double tax treaties	36
1.4. Conclusions	40
Chapter 2: General Rules for the Income Tax Treatment of Sportsmen under Double Tax Treaties	43
2.1. The application of double tax treaties to sportsmen	43
2.2. Personal scope of article 17 of the OECD Model	44
2.2.1. The concept of a sportsman	44
2.2.2. Teams, sports clubs and intermediaries	56
2.3. Income covered by article 17 of the OECD Model	60
2.4. Apportionment and allocation of income to article 17 of the OECD Model	67
2.5. Source of income subject to article 17 of the OECD Model	74

2.6.	Taxation of income of sportsmen in the source country and in the residence country under article 17 of the OECD Model	79
2.7.	Income qualification conflict	89
2.8.	Divergences in the UN Model, US Model and double tax treaties	93
2.9.	Conclusions	101
Chapter 3:	The Tax Treatment of Various Types of Income of International Sportsmen under Double Tax Treaties	105
3.1.	Types of income earned by sportsmen depending on financing methods	105
3.2.	Prizes and awards	108
3.3.	Bonuses from governments and sports organizations	113
3.4.	Sponsorship income	118
3.5.	Advertising income	126
3.6.	Employment income	136
3.6.1.	Contract for employment of sportsmen in the light of article 17 of the OECD Model	136
3.6.2.	Income attributable to training	141
3.6.3.	Allocation of income from employment	144
3.6.4.	Income from government employment	145
3.6.5.	Pensions, severance pay and gratuities	146
3.7.	Business income	149
3.7.1.	Contract with an independent player in the light of article 17 of the OECD Model	149
3.7.2.	Cost of preparation and training	154
3.7.3.	Income from inaction	156
3.7.4.	Change of residence	162
3.8.	Scholarships	163
3.9.	Conclusions	170
Chapter 4:	Special Tax Treatment of International Sportsmen at Selected Sports Events	173
4.1.	Taxation of sportsmen at major international sports events and the approach of sports organizations	173
4.2.	UEFA EURO 2000 in Belgium and the Netherlands	178

4.3.	UEFA EURO 2008 in Austria and Switzerland	183
4.4.	FIFA World Cup 2006 in Germany	184
4.5.	FIFA World Cup 2010 in South Africa	185
4.6.	Tax exemptions offered to international sportsmen at major sports events	188
4.7.	UEFA EURO 2004 in Portugal	191
4.8.	Winter Olympic Games 2010 in Vancouver	192
4.9.	Summer Olympic Games 2012 in London	195
4.10.	UEFA Champions League finals 2011 and 2013 in London	200
4.11.	UEFA EURO 2012 in Poland and Ukraine	203
4.12.	Reasons for departing from the general rules of taxation of sportsmen in the case of major international sports events	212
4.12.1.	Requirements of sports organizations	212
4.12.2.	Economic value and benefits of tax exemptions for sportsmen	212
4.12.3.	Sociological and political reasons for exempting sportsmen from tax	221
4.13.	The consequences of departing from the general principles of taxation of sportsmen in the case of major international sports events	226
4.13.1.	Tax discrimination within the group of sportsmen	226
4.13.1.1.	Diversification of income tax treatment of sportsmen	226
4.13.1.2.	The concept of discrimination and the evaluation standards for a breach of the principle of equality	229
4.13.1.3.	Justifiability of departing from the general rules of taxation in the case of sportsmen participating in major international sports events	231
4.13.2.	Irregularities in the process of exempting sportsmen from tax on income from international sports events	235
4.14.	Conclusions	237
Chapter 5:	The Proposed Tax Treatment of International Sportsmen	245
5.1.	The need for new tax solutions for international sportsmen	245
5.2.	Income threshold	249
5.3.	Time threshold	254
5.4.	Limiting the application of article 17 of the OECD Model	257

5.4.1.	Sports events sponsored from public funds	257
5.4.2.	League clause	258
5.4.3.	The exclusion of the application of article 17 to employed sportsmen	259
5.4.4.	Reduction of the rate of withholding tax	259
5.5.	Removal or reversal of article 17 of the OECD Model	260
5.6.	Modification of the provisions of national law	265
5.7.	Fixed location of international sports events	266
5.8.	Legal fiction of fixed location of international sports events	268
5.9.	Multilateral tax treaty (Olympic tax truce)	269
5.10.	Centralized system of tax collection	274
5.11.	Statutes and by-laws of sports organizations	275
5.12.	Influence of sports organizations, the OECD and sportsmen on the possibility of adopting the proposed solutions	281
5.12.1.	The role of international sports organizations	281
5.12.2.	The role of the OECD and the UN	285
5.12.3.	The role of sportsmen	288
5.13.	Conclusions	289
Summary and conclusions		293
References		299

Already since ancient times, sport has played an important role in human life, providing health and social benefits, entertainment and leisure. Competitions and championships, inherent in the pursuit of sport, have always attracted athletes and spectators alike, as celebrations of universal values, fair competition and human skills. However, it soon became apparent that athletic meetings may also serve as an effective political, sociological and marketing tool, given their enormous potential to communicate messages to a mass audience. Sports mega-events, such as the Olympic Games and the soccer World Cup, are now a powerful business machine, fueled by modern media and generating huge revenues. At the heart of this phenomenon are athletes who can derive significant benefits from participating in the sports events. The types of income that the players receive from competitive sports, and related tax implications, are the most complex and diverse in the case of international events involving numerous athletes from various countries.

The tax treatment of sportsmen in the light of international tax law is regulated by article 17 of the OECD Model Tax Convention on Income and on Capital adopted by the Organisation for Economic Co-operation and Development (OECD) as it read on 22 July 2010 (the “OECD Model”). This provision provides a special rule for the allocation of taxing rights, which only applies to performing artists and sportsmen.¹ In accordance with article 17(1) of the OECD Model, notwithstanding the provisions of articles 7 and 15, income derived by a resident of a contracting state obtained as an entertainer, such as a theatre, motion picture, radio or television artist, or as a musician or sportsman, from his personal activities as such exercised in the other contracting state, may be taxed in that other state. Article 17(2) of the OECD Model states that if the income in respect of personal activities exercised by an entertainer or sportsman in his capacity as such accrues not to the entertainer or sportsman himself but to another person, then that income, notwithstanding the provisions of articles 7 and 15, may be taxed in the contracting state in which the activities of the entertainer or sportsman are exercised.

Article 17 of the OECD Model is a *lex specialis* in relation to articles 7 and 15, which relate, respectively, to income from business activity and

1. Article 17 of the *OECD Model Tax Convention on Income and on Capital* (22 July 2010) (OECD Model) is applicable to both sportsmen and artists, but this monograph covers only the issue of taxation of sportsmen and, consequently, artists were ignored in the analysis.

employment (sports activities can be carried out in either form) and limit, by threshold requirements and substantial presence tests, the right of the source country to tax income earned by non-residents. As a result, the primary right to tax certain income of athletes falls to the state of performance of sports activities (source state), even if the business in the other state is not performed through a permanent establishment (PE) situated therein, to which income covered by article 17 of the OECD Model may be attributable. Similarly – income of an athlete who provides services in the form of employment is taxable in the source state, regardless of the length of stay of the athlete in that country, and regardless of who bears the costs of remuneration. This means that the 183-day rule resulting from article 15(2) of the OECD Model does not apply in the case of sportsmen. In their bilateral relations, most countries use article 17 of the OECD Model when they negotiate agreements on the avoidance of double taxation. By including an equivalent of article 17 in a double tax treaty, the source state can protect its taxing right that often would be excluded in the light of the general principles laid down in articles 7 and 15 of the OECD Model, due to the fact that sports events typically do not require a prolonged presence in the state of performance.

Article 17 of the OECD Model allows the source state to impose tax in accordance with national law. This provision does not contain any restrictions regarding the tax base, tax rate or tax collection forms. Moreover, it lacks the rules on deductibility of expenditure. All of these elements are left to the national tax laws of the source state. As part of its internal system of tax on personal income, the country may also waive the right to tax athletes at source or design friendly tax regimes for particular sporting events. In the light of article 17, the residence state of the athlete also retains the formal right to tax. This provision constitutes an open distributive rule, which indicates that the income “may” be taxed in the source country, but fails to grant that state the exclusive right to collect the tax. The issue of taxation of income from sports activities in the country of residence thus remains open, which means that if the source state grants certain tax exemptions for athletes, and the state of residence exempts income from tax under national law or an agreement on the avoidance of double taxation, it may result in double non-taxation. If both states use their taxing rights, the necessity to grant the exemption by the residence state or permit the deduction of the tax paid at source from tax payable in the country of residence depends on article 23A or 23B of the OECD Model. These regulations give rise to numerous problems of interpretation and practical difficulties even in the case of cross-border activities of individual athletes, and international

multi-participant sports competition raises doubts that call into question the appropriateness of the tax treatment model proposed by article 17 of the OECD Model, based on unlimited taxation at source.

On the basis of article 17 of the OECD Model, the research problem of this book was formulated, which concerns the tax consequences of participation in international sports events, both in the light of the general principles of international tax law as well as under one-off tax regimes, adopted by host countries for various sporting events. The objectives of this book are to analyse the income tax treatment of athletes participating in international sports events and to determine whether the current rules of international tax law relating to the taxation of income earned by sportsmen fulfil their function in the context of international sporting events. This book also aims to throw new light on the process of interpretation and application of article 17 of the OECD Model, facilitating an overall assessment of its adequacy and effectiveness.

The main thesis of this book is that the current rules of international law relating to the taxation of income of sportsmen do not fulfil their functions in the context of international sports events with the participation of athletes from different countries, and fiscal measures developed in the current practice of organizing sports events are inconsistent and often incompatible with the general principles of international law and national law of the host countries. The book is an attempt to verify this thesis by showing that because of the concept and consequences of article 17 of the OECD Model, this provision generally does not apply in the case of major international sporting events. Article 17 of the OECD Model and the provisions of the agreements to avoid double taxation modeled on it are of limited use for such events as they grant the primary right to tax to the state where the athletes perform their activities, i.e. the state hosting the championship. In the case of international sporting events, such allocation of taxing rights is impractical and undesirable for sport organizations that often expect special tax treatment of players in the host countries of the tournaments. This statement is illustrated by examples of the solutions adopted to supplement or even replace article 17 of the OECD Model and national law based on it in the course of organizing the Olympic Games, the European Championships in football, the World Cup and other major sporting events. The analysis of these solutions shows that in practice, tax schemes different from those under article 17 of the OECD Model are introduced. In this book, an attempt has been made to explain why such alternative measures are adopted and whether article 17 could be changed to meet the requirements of today's championships. It has also been discussed how the tax arrangements between sport organizations

and the countries hosting the championships result in the lack of equality of athletes before the law and violation of fundamental principles of creating tax norms.

The book examines the tax treatment of sportsmen participating in major sporting events in several countries and compares these countries' tax legislation, determined by economic and social assumptions of governments and their regional development strategies. The book also analyses the financing of athletes and rewarding them for their achievements in the international arena, with particular emphasis on taxation of prize money coming from public funds. All these issues have a considerable impact on the model of taxation of domestic and foreign sportsmen.

The structure of this book consists of five chapters covering the following main issues: a presentation of the tax consequences of deriving income in connection with participation in sports competitions abroad in the light of article 17 of the OECD Model, a study of the solutions adopted for athletes involved in specific sporting events in different countries and a critical analysis of these solutions, their causes and effects, as well as a proposal to amend the current legal rules.

Chapter 1 presents the background and history of earning income from international sports competition. The chapter includes a brief overview of the ancient Olympic Games, with particular emphasis on those aspects of the history of the Olympics that determine the tax position of modern athletes participating in the competition. Types of income derived from the ancient sports rivalry show that today's mechanisms are largely modeled on the ancient Greek ways of rewarding athletes. When characterizing participation in other international sports events, the emphasis is put on the distinction between the financing of professional and amateur sportsmen and the structure of the flow of payments in connection with the championships, especially those where there is no direct payment from the organizers to the athletes, and the stream of income flows through national sports organizations and teams. This chapter also presents the general issues of international tax law and the genesis of a particular distributive rule for athletes, as provided for in article 17 of the OECD Model.

Chapter 2 deals with the general mechanism of article 17 of the OECD Model. The description of the scope of this provision includes various issues specific to sporting events, such as the distinction between professional and amateur athletes, Olympic-recognized disciplines and the impact of being considered an athlete on the application of the OECD Model. The general

discussion on the correct interpretation of article 17 is supplemented by references to articles 7, 12, 15, 19 and 21 of the OECD Model. Demarcation lines and overlaps between those provisions are subject to in-depth analysis.

Chapter 3 presents the characteristics of the types of income that sportsmen participating in international sports events can receive, such as awards, bonuses, benefits in kind, sponsorship and scholarships, as well as regular income from employment or personally performed activity or business in the case of professional athletes. The discussion on each type of income is followed by the presentation of the tax implications of obtaining such income in the light of article 17 of the OECD Model and other distributive rules separating tax jurisdictions.

In chapter 4, the practice of creating a special tax framework for sportsmen participation in major international sporting events is characterized. As a rule, the national legislation of most countries provides for the collection of tax on the income of foreign athletes, derived from the exercise of sporting activities on their territory. For many years the income tax treatment of athletes participating in major international sporting events was not considered by the organizers. Subsequent exemptions or abandonment of the implementation of tax claims were the result of informal arrangements, and the departure from the general principles of taxation of athletes was part of administrative practice adopted by the host countries. The current bidding procedure requires the candidate countries to promise special tax treatment for sportsmen. The tax concessions guaranteed by the host country to the sports organizations are later introduced under domestic legislation. The discussed examples of the tax regimes for champions indicate inconsistent and arbitrary regulation of the position of athletes in national legislation. The solutions adopted in practice either completely depart from the rules laid down in article 17 of the OECD Model and the national laws based on it, and provide tax relief in the host country, or keep the withholding tax on modified terms.

To explain why countries introduce special tax regulations for athletes participating in major international sporting events, this book briefly presents the economic, political and social benefits of granting tax exemptions to international sportsmen. These benefits can drive the desire to host the championships and, consequently, increase the negotiating power of sport organizations which determine the venue of the events, and are able to request a favourable tax environment for the athletes. As a result, although host countries have different attitudes to the taxation of sportsmen participating in sport events and may want to adopt a variety of tax solutions

(some countries are ready to unilaterally exempt income earned by athletes from withholding tax and others are reluctant to grant such an exemption), a comparative look at the practical solutions adopted in the course of organizing some of the events of the last decade shows that despite having the possibility of taxing sportsmen, granted by the agreements for the avoidance of double taxation in accordance with the OECD Model, host countries are increasingly ready to release the champions from income tax.

The inevitable primary concern that appears throughout this monograph is the potential discrimination and inequality resulting from the creation of special tax regimes only for the participants of a given event. These issues are discussed in the second part of chapter 4. Tax discrimination in the context of major sporting events includes two main aspects, due to the overlap of the regime created by the OECD Model and the general principles of national law, and one-time solutions adopted for the purposes of individual events. First, there is a difference in the treatment of income from sports activities and other personal economic activity. Second, there is a different treatment of the athletes participating in particular sporting events in relation to other athletes. Inequality before the law in relation to sportsmen in general, compared with those personally performing other gainful activity, is due to the application to the proceeds of sports of separate – less favourable – tax rules, contained in article 17 of the OECD Model. The consequences of the adoption of one-time tax regimes for players in large sporting events are also anomalies in the development of tax law in the host countries.

Chapter 5 proposes alternative solutions that could be applied to income earned by sportsmen at international sporting events, such as an international tax treaty concerning such events or establishing a permanent location for them. In addition, other optional tax models, including those already used by the OECD in relation to other types of income, have been analysed and evaluated. The question of the legitimacy of separate tax rules applicable to athletes has been revisited. In fact, these are the specific rules of taxation that have, in turn, resulted in the creation of a practical need for special tax treatment of mass sporting events, which, with their complex background and political, economic, social and marketing significance, require a new approach to the taxation of international athletes. In assessing the feasibility of the proposed solutions, their compliance with the principles of international and domestic tax law was taken into account, as well as the extent to which they pursue the interests of sports stakeholders. The book elaborates on the role of international sports organizations such as the IOC (International Olympic Committee), the FIFA, the UEFA (Union

of European Football Associations) and the OECD in ensuring fair and consistent treatment of athletes, as well as in initiating and formulating the contents of the new solutions.

The research methodology used in this monograph includes literature research, legal analysis and evaluation of existing regulations of international tax law, evaluation of national tax regimes and the solutions adopted specifically for sporting events, case studies and partially *de lege ferenda* postulates. In inferring some general conclusions from the examples of tax regimes, the inductive method of reasoning was used. The research methodology mostly required legal analysis, legal reasoning and interpretation with the complementary use of the comparative historical method, where reference was made to primary sources (e.g. contracts with host cities). An important research tool was also the interpretation of laws and other documents. Elements of legal reasoning were used to justify the claims made and to verify the theses. However, a proper assessment of the phenomenon of sporting events in the tax context also requires the analysis of their historical, cultural, social, economic and strategic aspects. These issues have been presented using the existing research results. This monograph includes a review of the literature on the history of the ancient Olympic Games, with particular emphasis on the historical aspects of the Games that determine the tax position of modern players. The legal analysis of primary sources (Olympic Charter, the by-laws of sports organizations) and other relevant materials leads to the short characteristic of modern championship, with particular emphasis on the legal and regulatory aspects, which may affect the tax position of athletes. Then, on the basis of the scientific literature on the taxation of international athletes, the problems and questions that arise in the application of article 17 of the OECD Model have been identified. Secondary sources were used to explain the general principles of international tax law, and the original source subject to interpretation was the OECD Model. Source materials were used to present the tax regimes created, inter alia, by Canada, the United Kingdom, South Africa, Germany, Belgium, Poland and Ukraine for the sports competitions organized in these countries. The way of financing the championships was presented in part on the basis of press reports. Using the comparative method, the evolution of the approach to the taxation of sportsmen, which occurred in the last decade, was presented.

Academic importance of this monograph results from a new perspective given to the issue of taxation of international athletes. Advanced study of issues arising in the context of sporting events involving many participants offers an innovative approach to the consequences of the assignment of the

primary right to tax the income from sporting activities to the source country in the light of article 17 of the OECD Model. This approach to article 17 contributes to the search for a coherent tax policy in relation to the taxation of sports events and athletes. It also contributes to the understanding of the legal environment of sports events and the fiscal situation of the participants. It raises the question that had long been neglected but which reflects today's tension between the need to create a favourable fiscal regime for sportsmen because of their role in society and the need to recognize the economic dimension of sport and apply the appropriate tax treatment to income derived from it. This book is an attempt to explain how these considerations are reflected in fiscal policy and to create a coherent tax system. The tax treatment of athletes is an important part of the regulatory environment of sporting events and requires a clear policy. This publication therefore stresses the importance of the tax implications for the future funding of international athletes and the responsibility of sports organizations for the entire community of athletes. The conclusions presented in the monograph are of practical importance for the Olympic movement, sport organizations and tax administrations around the world, especially in countries that are considering hosting an international sporting event, because all these bodies take action in relation to the taxation of athletes. The results of this research may be helpful in the design of tax policy and the adoption of an appropriate financing model for the development of athletes. This book presents various factors that may affect this policy and provides an in-depth analysis of the solutions adopted by a number of host countries. It may serve as a comprehensive source of information on the types of revenue received from participation in sports competition. It also includes an analysis of the role of sportsmen in modern marketing and explains the approach of governments and businesses to supporting athletes with an Olympic potential. The study should raise awareness of tax issues in sport and contribute to the adoption of a consistent approach to taxation of international sportsmen. In practice, the information collected and the results of the research will be of interest to those involved in sports performances and their advisors.

Contact

IBFD Head Office
Rietlandpark 301
1019 DW Amsterdam
P.O. Box 20237
1000 HE Amsterdam, The Netherlands
Tel.: +31-20-554 0100 (GMT+1)
Fax: +31-20-620 8626
Email: info@ibfd.org
Web: www.ibfd.org



IBFD, Your Portal to Cross-Border Tax Expertise