PART A – INTRODUCTION AND DEFINITIONS

Introduction, aim of the thesis and research methods
1.1. A variety of stars
1.2. Performances are business activities
1.3. Special taxing rules for artistes (Article 17 of the OECD Model Tax Convention)
1.4. Aim of the study and delimitation
1.5. Structure of the study and research methods

History of non-resident artiste taxation
2.1. Income taxation of non-residents
2.2. International double taxation
2.3. Double (and multilateral) tax treaties
2.4. Oldest tax treaties; income from the “practice of art”
2.5. The League of Nations: no special rules for artistes
2.6. The 1939 United States–Sweden tax treaty
2.7. The 1945 United States–United Kingdom tax treaty
2.8. US treaties with other countries in 1951
2.9. German tax treaties in the 1950s and 1960s
2.10. The 1963 OECD Model Tax Convention; introduction of Article 17
2.11. The object and purpose of Article 17(2) in 1977
2.12.1. Mistrust, tax avoidance schemes
2.12.2. Equal treatment as principle, but still expanding the deviating treatment
2.12.3. Gross taxation, no deduction of expenses, appropriate tax rate
2.12.4. Tentative conclusions, suggested improvements
2.13. Implementation in the Commentary to the 1992 OECD Model
2.14. The limited approach in the 1996 US Model
2.14.1. Article 17 for artistes and sportsmen
2.14.2. The de minimis rule in Article 17(1)
2.14.3. The limited approach in Paragraph 2
2.14.4. Extensive use in the various US tax treaties
2.15. Discussion after the 1987-1992 changes
2.15.1. Publications in the early years after the 1992 implementation
2.15.2. Book by Daniel Sandler and IFA Congress in 1995
2.15.3. Rijkele Betten and Marco Lombardi on triangular situations in 1997
2.15.4. Harald Grams on the German artistes tax rules in 1999
2.15.5. Decision by the Tax Court of Canada
2.15.6. General criticism of Article 17
2.15.7. Taxation of payments to “star companies” in Spain
2.15.8. Taxation of non-resident artistes’ income in Finland
2.15.9. 2001 IFA Congress in San Francisco
2.15.10. Obstacles for international performing artistes
2.15.11. Jörg Holthaus in Germany
2.15.12. Rent-a-star – the object and purpose of Article 17(2)
2.15.13. The Arnoud Gerritsen decision by the European Court of Justice
2.15.14. Limited approach of Article 17(2) in Sweden
2.15.15. Angel Juárez, LLM in Leiden in 2003
2.15.16. Further publications
2.16. General discussion and conclusions

Who is an artiste?

3.1. Various publications, different views, Article 3(2) of the OECD Model
3.2. The meaning of the words “artiste” and “entertainer”
3.3. First description in the 1939 United States--Sweden tax treaty
3.4. Second description in German tax treaties in 1950s and 1960s
3.5. Clearer description in the 1963 OECD Draft Model Treaty
3.6. Minor adjustments in the 1977 OECD Model Tax Convention
3.7. More description of the “artiste” in the 1987 OECD report
3.8. Continuation in the 1992 OECD Commentary
3.9. Little help in the wording in the 1996 US Model Tax Convention
3.10. Klaus Vogel on double taxation conventions
3.11. Daniel Sandler and IFA Seminar in 1995
3.12. Articles and court cases in various countries
3.12.1. Germany
3.12.2. Austria
3.12.3. Canada
3.12.4. United Kingdom
3.12.5. United States
3.12.6. Netherlands
3.12.7. Belgium
3.12.8. Australia
3.13. General definition of “who is an artiste”; list of examples
3.14. General discussion and conclusions

What is performance income?

4.1. Different types of (performance) income
4.2. The Commentary on Article 17 of the OECD Model and the 1987 OECD Report
4.3. Practical implications for different types of performance income
4.3.1. List of examples
4.3.2. Performance fee versus rehearsal fee
4.3.3. Production expenses for a performance
4.3.4. Inducement payments, options, retainers and restrictive covenants
4.3.5. Cancellation fees and insurance cover
4.3.6. Advertising and commercials
4.3.7. Sponsorship
4.3.8. Endorsement by suppliers of equipment
4.3.9. Subsidies
4.3.10. Royalties for record or movie sales
4.3.11. Tour support from record companies
4.3.12. Publishing copyright
4.3.13. Neighbouring rights
4.3.14. Sales of merchandising
4.3.15. Pensions and other insurance benefits
4.4. The “territoriality” principle
4.5. General discussion and conclusions

PART B – PRESENT INTERNATIONAL SITUATION – BILATERAL TREATIES
Tax treaties: allocation with Article 17

5.1. Allocation according to Article 17(1) and (2)
5.2. No special artiste clause in tax treaties
5.3. Limitation to only business activities, exceptions for artistes/employees
5.4. The use of Article 17(2) and its limitations
5.5. The additional Article 17(3)
5.5.1. Exception in the Commentary
5.5.2. More frequent use than expected
5.5.3. Germany: example of a country using Article 17(3) in tax treaty practice
5.5.4. Variations in the content of Article 17(3)
5.5.5. Undefined conditions
5.5.6. Defending the state’s budget?
5.5.7. Chances of unequal treatment
5.6. Two examples of country’s tax treaties: the United States and the Netherlands
5.6.1. Variations in tax treaty policy
5.6.2. Tax treaties: United States
5.6.3. Tax treaties: Netherlands
5.7. Triangular situations
5.7.1. Resident in different countries
5.7.2. Decision in the Netherlands in 1983
5.7.3. Article by Rijkele Betten and Marco Lombardi in 1997
5.7.4. Change in the 2000 OECD Commentary
5.7.5. Double taxation problems in triangular situations
5.7.6. Pension benefits
5.7.7. Reference to Article 1 of the OECD Model Tax Convention
5.8. General discussion and conclusions

Non-resident artiste tax rules in performance countries

6.1. Similarities and differences
6.2. Survey of the non-resident artiste tax rules in performance countries
6.3. Almost complete coverage
6.4. The deduction of expenses
6.5. The (withholding) tax rate
6.6. Income tax return after the taxable year
6.7. Concurrent taxation, other charges or levies
6.8. Unilateral exemptions
6.9. General discussion and conclusions

Elimination of double taxation

7.1. Exemption or credit: history in general
7.2. Explanation of tax exemption and tax credit methods
7.2.1. Two different systems, with two variations
7.2.2. Full exemption
7.2.3. Exemption with progression
7.2.4. Full credit
7.2.5. Ordinary credit
7.2.6. Summary of the figures
7.2.7. Conclusions from example; recommendations in Article 23 of the OECD Model
7.2.8. Differences in taxable income
7.3. Recommended relief of double taxation under Article 17
7.3.1. No recommendation in 1963, introduction in 1977
7.3.2. Example: the Netherlands
7.3.3. Exceptions in other countries
7.3.4. Clearer position in the OECD Model Tax Convention?
7.4. Basket/overall method versus per-country method
7.5. Tax credit problems
7.5.1. Tax exemption method is easier to apply
7.5.2. Tax certificate
7.5.3. Qualification of foreign tax
7.5.4. Final and compulsory payments
7.5.5. The person of the artiste
7.5.6. Triangular situations
7.5.7. Net deals: transfer of the tax burden to the organizer
7.5.8. Differences in taxable base
7.5.9. Year of tax credit (or exemption)
7.5.10. Creditable domestic tax in the residence country
7.5.11. Complexity of the system of foreign tax credits
7.6. Excess tax credits
7.7. Deduction of foreign tax as an operating expense
7.8. General discussion and conclusions

The deduction of (production) expenses

8.1. Expenses seem to be difficult
8.2. Non-deductibility of expenses for non-resident artistes in most countries
8.3. The amount of expenses
8.3.1. Survey in the Netherlands
8.3.2. More information about the earnings
8.3.3. Expenses in the database
8.3.4. Total earnings and expenses period 2001-2003
8.3.5. Confirmation with survey of the Dutch tax authorities over 2002
8.3.6. Specified earnings and expenses for the year 2003
8.3.6.1. Figures for 2003, explanation of the two graphs
8.3.6.2. First graph: variance of percentage of production expenses
8.3.6.3. Second graph: number of applications, brackets of expenses
8.3.6.4. Conclusions from the figures and the graphs
8.3.6.5. Information about individual performances
8.3.6.6. “Happy few”
8.3.6.7. “Well-established professionals”
8.3.6.8. “Artistes struggling for recognition”
8.4. Why do artistes incur such high expenses?
8.4.1. Variation in expenses
8.4.2. Connection between expenses and royalties
8.5. Special rules and exclusions for amateurs
8.6. General discussion and conclusions

Examples of international excessive taxation

9.1. Excessive taxation can occur
9.2. Eight examples, divided into three groups
9.2.1. Explanation of the examples
9.2.2. Three individual examples
9.2.3. Four examples, following Paragraph 11 of the OECD Commentary
9.2.4. One extra example: no source tax in the country of performance
9.3. Results from these examples
9.3.1. Too heavy taxation in the country of performance
9.3.2. The reversal in the 1992 Commentary hits the wrong target
9.3.3. Small risk of under-taxation or even double non-taxation
9.3.4. Excessive taxation can turn into double taxation
9.4. General discussion and conclusions

**Tax revenue and administrative burden**

10.1. Size of the contribution to a state’s budget
10.2. Calculation of the tax revenue in the Netherlands
10.2.1. Two reliable sources
10.2.2. Extrapolation of the Dutch study on expenses
10.2.3. Evaluation of the Dutch artiste and sportsman tax system
10.2.4. Conclusions for the Netherlands
10.3. Tax revenue in other source countries
10.3.1. Figures from three countries
10.3.2. United Kingdom
10.3.3. Australia
10.3.4. New Zealand
10.4. A weighted average of tax revenue for the four countries
10.5. Tax credits or tax exemption in the residence country
10.6. Administrative burden
10.7. General discussion and conclusions

**PART C – PRESENT SITUATION WITHIN THE EUROPEAN UNION**

**Unequal treatment in the European Community**

11.1. Market integration in the European Community
11.2. Obstacles for international performing artistes within the Community
11.3. The role of the European Court of Justice
11.4. The Arnoud Gerritse decision (C-234/01)
11.4.1. First case about artiste taxation
11.4.2. The facts and the preliminary question
11.4.3. Discussion while the case was pending
11.4.4. Decision by the ECJ, after conclusion of the Advocate-General Léger
11.4.5. Reactions and changes after the decision
11.4.6. Ambiguity following from the second answer
11.5. New cases pending before the European Court of Justice
11.6. FKP Scorpio Konzertproduktion GmbH (C-290/04)
11.6.1. The facts of the case and the preliminary questions
11.6.2. Discussion and action while the case is pending
11.6.3. Official reaction from the German authorities
11.6.4. Reactions by the European Commission and some Member States
11.6.5. Oral hearing
11.7. Centro Equestre da Leziria Grande Lda (C-345/04)
11.7.1. The facts of the case and the preliminary question
11.7.2. Administrative obstacles
11.7.3. Changes by the German tax authorities in November 2003
11.7.4. Comparison with transfer pricing and allocation of head office expenses
11.7.5. Comparison with other ECJ decisions
11.8. Solutions through permanent establishment(s)?
11.9. Can gross taxation of non-resident artistes be a (forbidden) VAT?
11.10. Actions in the cultural field
11.11. General discussion and conclusions

**Conflicts between OECD Model and EC Treaty**

12.1. Community law supersedes treaty law, unless it provides otherwise
12.2. The (non-)deductibility of expenses and the position of the Commentary
12.3. Interpretation of Article 17(2): limited or unlimited approach
12.4. Exemptions from corporation tax (Stauffer – C-386/04)
12.5. Unequal treatment following from Article 17(3)
12.6. Deviating treaty provisions and most-favoured-nation treatment
12.7. Is Article 17 of the OECD Model permissible under Community law?
12.8. European law and the tax credit problems in the country of residence
12.8.1. The limitation of the ordinary tax credit
12.8.2. Tax credit problems
12.8.3. Mutual assistance, exchange of information
12.8.4. Developments towards a full tax credit in the European Union
12.9. General discussion and conclusions

PART D – DISCUSSION OF THE PRESENT SITUATION

Discussion and conclusions after the study

13.1. End of the study
13.2. Conclusions based on the nine criteria defined in 1.4.
13.3. Considerations of tax avoidance and non-compliance
13.4. Awareness at the OECD in 1987, but lack of action since then
13.5. Conclusions

PART E – FUTURE

How to improve Article 17 of the OECD Model

14.1. Problems with international artiste taxation need solutions
14.2. Reintroduction of the limited approach for Article 17(2)
14.3. Change in Paragraph 10 of the Commentary
14.4. Normal income (or corporation) tax returns
14.5. Special provisions for small artistes (the de minimis rule)
14.6. Restrict Article 17 to business activities, exempt employees
14.7. Exemption for equivalent part of fixed salaries
14.8. Addition of Article 17(3) to the official text of Article 17
14.9. Change to tax exemption or full credit would give a better balance
14.10. Conclusions

Can Article 17 of the OECD Model radically be changed?

15.1. Is more possible than just modifications?
15.2. A radical change may be considered
15.2.1. Turnaround of Article 17 of the OECD Model
15.2.2. Still counteracting tax avoidance behaviour
15.2.3. Exchange of information and compliance
15.3. Comparison with the nine criteria from the aim of the thesis
15.4. Conclusions

PART F – SUMMARY AND CONCLUSIONS

Summary and conclusions

16.1. Introduction and definitions
16.2. Present situation – bilateral treaties
16.3. Present situation within the European Union
16.4. Conclusions for the present situation
16.5. Future
Summary and conclusions in Dutch

17.1. Introductie en definities
17.2. Huidige situatie – bilaterale belastingverdragen
17.3. Huidige situatie binnen de Europese Unie
17.4. Conclusies voor de huidige situatie
17.5. Toekomst

Bibliography
Legislation and case law