CHAPTER 9

EXAMPLES OF INTERNATIONAL EXCESSIVE TAXATION

9.1. Excessive taxation can occur

In the preceding chapters many remarks have been made about the taxation of international performing artistes. On the one hand, most countries have simplified the withholding tax rules for visiting non-resident artistes, do not accept the deduction of expenses and do not allow normal income tax settlements at the end of the year.[1] This may lead to a higher tax burden than for other (non-resident) taxable persons. On the other hand, countries do not give a full credit for the foreign tax that their residents incur on their foreign income, but restrict the compensation for the elimination of double taxation to the amount of domestic income tax that is due on the foreign income, or even do not allow any tax credit at all.[2]

With these limitations in both the country of performance and the country of residence international performing artistes may experience "excessive" taxation. This happens when the taxes of the two countries overlap in such a way that artistes bear a higher tax burden than if they were subject to one tax jurisdiction only. There can be several reasons for this additional international tax burden ("excessive taxation"), such as differences in taxable base, one country not recognizing the claims of the other or taxing the income in the hands of two different persons. "Excessive taxation" obstructs international economic development and should be avoided as far as possible.[3]

It is debatable whether the source or the resident country should take measures to prevent this "excessive taxation". Originally, the OECD in general favoured taxation in the residence country as the preferred option for avoiding double or "excessive" taxation. This meant that the source country had to restrict its taxation as much as possible or only levy a low source tax. But within the OECD, in other international organizations and

1. See chapter 6 on national artiste tax rules.
2. See chapter 7 on tax credit limitations and problems.
3. See 2.2. on international economic and juridical double taxation.

in the literature more and more attention has been given over recent years to the interests of source countries. Examples are the decisions in the *Gilly*[4] and the *Gerritse*[5] cases of the European Court of Justice, which confirmed the rights of the source country with regard to (normal) source taxation. This leads e.g. to the acceptance of insufficient tax credits in the residence country, on the condition that non-residents are treated on a par with others in the source country.

Some countries allow the carry-back or carry-forward of excess tax credits. Examples are the United States and the Netherlands, as was earlier explained in 7.6. Normally, countries using the exemption method for their resident artistes with foreign-source income do not provide any compensation for insufficient tax exemption.

9.2. Eight examples, divided into three groups

9.2.1. Explanation of the examples

This chapter provides calculations of the taxation of the foreign performance income of international artistes, taking into consideration both the source tax in the country of performance and the tax in the residence country. This will give a complete picture.

The figures are not derived from real cases but are hypothetical, although based on the real, practical situations of international performing artistes. Eight examples are chosen, divided into three groups:

– three examples show the effect for individual artistes, ranging from small artistes with low expenses,[6] to medium artistes with moderate expenses[7] and finally big artistes with high expenses.[8] These three

4. *Gilly*, ECJ 12 May 1998, C-336/96.
5. *Gerritse*, ECJ 12 June 2003, C-234/01.
6. With the example of the "small artiste with low expenses" it can be observed whether at this minimal level the threat of excessive taxation is still present.
7. With the example of the "medium artistes with moderate expenses" it can be seen how the balance of source and residence taxation works out for the very broad middle group of artistes. The amount of expenses will, deliberately, be pitched at a lower level than the average which was calculated in 8.3.4., because this eliminates the effect of the large standard deviation of the expenses.
8. With the example of "big artistes with high expenses" the balance of source and residence taxation can be seen at the top end of the market. The percentage of expenses will be set at the average percentage of expenses for artistes earning more than EUR 100,000 in the year 2003 in the Netherlands. See 8.3.6.2.

examples represent the variation in more than 90% of the market, if compared to the figures for earnings and expenses in the Netherlands in the year 2003;[9]

– four examples follow the three illustrations that are given in Paragraph 11 of the 2003 Commentary on Article 17 of the OECD Model Tax Convention; and
– one example shows the result for an artiste who has been performing in a country that does not levy a source tax.

All figures in the examples are in euro.

9.2.2. Three individual examples[10]

(1) *Small artiste, low expenses*

A Belgian singer performs in the Netherlands for 2 days. His fee is 2,000 and his direct expenses are 500. The withholding tax in the Netherlands is 20% from the gross fee, without deductions for expenses.[11] Therefore, 400 tax is withheld from the performance fee, which is effectively 27% of the 1,500 profit.

In Belgium, the foreign earnings and expenses are reported as part of the singer's worldwide income and a total taxable income of 15,000 remains. This leads, after personal allowances, to 3,176 of income tax – an average rate of 21% of taxable income.

Foreign income is exempt in Belgium, but the tax reduction is limited to the (average) amount of Belgian tax that is due on the net foreign income.[12] The tax exemption therefore is 21% x 1,500 = 315. Because 400 had been withheld, the result is excess taxation of – 85.[13]

9. See 8.3.6.
10. These examples were published earlier in Dick Molenaar, "Obstacles for International Performing Artists", 42 *European Taxation* 4 (2002), at 149. Example (3) has been adjusted, because in 2003 the German artiste tax rate went down from 29% to 21.1%, including surcharges.
11. The Belgian artiste did not apply for the deduction of his expenses with a so-called *kostenvergoedingsbeschikking* in the Netherlands, because the amount did not justify the advisory costs for the application.
12. This is called "exemption with progression" and is specified in Article 23A of the 2003 OECD Model Tax Convention. See also 7.2.3 and 7.2.6. Because of the progression the Belgian artiste also has the pay an extra amount of tax, which is the difference between the marginal (top) and the average tax rate.
13. Because the normal income tax rates in Belgium and the Netherlands are comparable, this excessive taxation is not the result of tax rate differences.

(2) *Medium artiste, moderate expenses*

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

In Germany, the foreign earnings and expenses are reported in the artiste's income tax return as part of his worldwide income and a total taxable income of 50,000 remains. This leads, after personal allowances, to 16,000 of income tax, on average 32% of the taxable income.

Foreign income is exempt in Germany, but the tax reduction is limited to the (average) amount of German tax that is due on the net foreign income. The tax exemption therefore is 32% x 10,000 = 3,200. Because 5,000 was withheld, the result is excess taxation of – 1,800.[14]

(3) *Big artiste, high expenses*

A major English artiste gives two shows in Germany. His fee is 150,000 and his direct expenses are 105,000. The withholding tax in Germany is 21.1% from the gross fee, without taking production expenses into consideration. Therefore, 31,650 is withheld, which is effectively 70% of 45,000 profit.

In the United Kingdom the foreign earnings and expenses are reported as part of the artiste's worldwide income and a total taxable income of 300,000 remains. This leads, after personal allowances, to 108,000 of income tax, which is on average 36% of taxable income.

Foreign tax can be credited in the United Kingdom but only up to the (average) amount of tax that is due on net foreign income.[15] The tax credit, therefore, is a maximum 36% x 45,000 = 16,200. Because 31,650 was withheld, the result is an excess credit of – 15,450.[16]

14. Because the normal income tax rates in Germany and Spain are comparable, this excessive taxation is not the result of tax rate differences.
15. The "ordinary tax credit", as specified in Article 23B of the 2003 OECD Model Tax Convention. See also the 7.2.5. and 7.2.6., and Philip Baker (1998), at 445.
16. Because normal income tax rates in the United Kingdom are lower than in Germany, this excess taxation can to some extent be found acceptable. But a considerable excess taxation remains, because the effective German tax rate on the profit on the German performances is 70% (31,650 tax / 45,000 profit).

The figures from these three examples can be summarized as follows (in euro):

	(1)	(2)	(3)
artiste	*small*	*medium*	*big*
expenses	*low*	*moderate*	*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%	21.1%
withholding tax	400	5,000	31,650
effective tax rate (from profit)	26%	50%	70%
world income in residence country	15,000	50,000	300,000
total tax in residence country	3,176	16,000	108,000
average tax rate in residence country	21%	32%	36%
maximum tax credit in residence country	315	3,200	16,200
excessive taxation	– 85	– 1,800	– 15,450

Is this excessive taxation is the result of the differences in tax rates in the source country? This may be the case in example (1), in which the source country levies a flat withholding rate of 20%, leading to an effective tax rate of 26% from the profit, while the residence country levies 20% from the profit. This effect could be eliminated if the Belgian artiste filed an income tax return in the Netherlands and was taxed against the normal Dutch rates.[17]

But even though the differences in tax rates can also influence the results of examples B and C, they cannot fully explain the effective tax rates of 50% and 70% from the profit in the source country. No country (any longer) has such high tax rates in its tax progressive table.

17. This normal income tax return is an option for non-resident artistes in the Netherlands (but is not obligatory). But many other countries do not allow a normal income tax settlement for non-resident artistes; see 6.2.

Furthermore, these rates are *average* tax rates and not the marginal top rates of the progression (in both countries). The average tax rate is always (or at a very high income at best equal) to the marginal top tax rate.[18]

Finally, it is important that the income tax rates in four of the five countries involved (Belgium, the Netherlands, Germany, Spain, the United Kingdom) do not differ sufficiently for the calculated excess taxation to result from the difference. Only the United Kingdom has lower tax rates, although these do not have much influence on the result in example (3).

9.2.3. Four examples, following Paragraph 11 of the OECD Commentary[19]

The next four examples follow the illustrations that are given in Paragraph 11(a), (b) and (c) of the 2003 OECD Commentary on Article 17. The second illustration of the Commentary has been divided into two different examples that occur regularly in practice. In these examples a comparison is made between the unlimited approach and the limited approach of Article 17(2), after the reversal in the 1992 Commentary.[20]

The examples are *ceteris paribus* for the differences in the normal tax rates between the source and the residence country, i.e. these income tax rates are assumed to be comparable in both countries.

(1) *Group of four artistes, represented by a management company*

The performance fee goes to the management company, which also pays the direct production expenses for the shows and the indirect expenses during the year. The artistes receive monthly salaries from the management company, but the remaining balance before the management commission (percentage) will

18. Not brought into the discussion is the issue of whether the source country has the right to take worldwide income into consideration when applying the tax rates. Bilateral tax treaties normally allow the country of residence to eliminate double taxation in such a way that the progression of the country can still be applied, but the progression in the source country still seems to be the competence of the source country. This has, though, not been developed by source countries for other sources of (active) income, e.g. for business income with permanent establishments and for income from employment, and they have therefore not been discussed here either.
19. The examples were published earlier in the article by Dick Molenaar and Harald Grams, "Rent-A-Star, The Purpose of Article 17(2) of the OECD Model Tax Convention", 56 *Bulletin for International Fiscal Documentation* 10 (2002), at 500.
20. See 2.12., 2.14. and 2.15. for the historical development from the limited to the unlimited approach of Article 17(2).

also accrue as a bonus to the artistes. But the artistes are not shareholders of the management company. The national tax rules in the source state allow a (final) withholding tax of 20% from the gross performance income, while the average tax rate on the income of the artistes in the residence country is considered to be 35%.

This example is comparable to illustration (a) in Paragraph 11 of the 2003 OECD Commentary:

performance fee	100,000	
agent fee 10%	– 10,000	
production expenses	– 30,000	(directly related to performance)
indirect expenses	– 15,000	(yearly expenses, divided over performances)
salary for artistes	– 20,000	(monthly salaries, divided over performances)
remaining balance to artistes	– 10,000	(bonus)
commission management (15%)	15,000	
Unlimited approach		
country of performance: source tax		
20% x 100,000 gross fee =	20,000	
residence country: income tax artistes:		
35% x (20,000 + 10,000)[a] =	10,500	
tax credit (max.)	– 10,500	
balance to be paid in residence country	0	
excessive taxation: 10,500 – 20,000 =	– 9,500	
Limited approach		
country of performance: source tax		
20% x (20,000 + 10,000) income artistes =	6,000	
residence country: income tax		
35% x (20,000 + 10,000) =	10,500	
tax credit	– 6,000	
	4,500	
excessive taxation: 6,000 – 6,000 =	0	

a. The management company can also apply for a tax credit in the country of residence, because a part of the source tax can be allocated to the management commission. But the management needs to deduct its expenses first (office, staff, travel, telephone, etc.), because also here the tax credit will only be allowed against the tax on the profit. Furthermore, the management company can have problems achieving this tax credit, because the tax authorities in the source country may consider that it is not an “artiste”. For these reasons this tax credit has been left out.

The example shows that there will be considerable excessive taxation with the unlimited approach, while the limited approach leaves the residence country a secondary taxing right to levy the difference between its own tax rates and the withholding tax in the source country.

(2a) *Commercial theatre company*

The company receives the performance income and pays the direct production and indirect overhead expenses, and salaries for the artistes/employees. The profit is kept by the commercial company and leads to a corporation tax liability.[21]

This example is comparable to illustration (b) in Paragraph 11 of the 2003 OECD Commentary:

performance fee	130,000	
direct expenses	– 30,000	(directly related to performance)
indirect expenses	– 40,000	(yearly expenses, divided over performances)
salaries for actors/employees	– 50,000	(monthly salaries, divided over performances)
remaining profit for company	10,000	
Unlimited approach		
country of performance: source tax		
20% x 130,000 performance fee =	26,000	
residence country: income/corporation tax		
35% x (50,000 + 10,000) =	21,000	
tax credit (max.)	– 21,000	
balance to be paid in residence country	0	
excessive taxation: 21,000 – 26,000 =	– 5,000	
Limited approach		
country of performance: source tax		
20% x 50,000 salaries =	10,000	
residence country: income/corporation tax		
35% x (50,000 + 10,000) =	21,000	
tax credit	– 10,000	
balance to be paid in residence country	11,000	
excessive taxation: 10,000 – 10,000 =	0	

The conclusion for this example (2a) is the same as for example (1).

21. This example is comparable with the example that was used at Seminar B at the 55th IFA Congress in San Francisco (2001) about the football club Armoury.

(2b) *Non-profit classical orchestra*

The orchestra in this example has more expenses than market earnings, but receives a subsidy from the government to cover the deficit. The orchestra is exempt from corporation tax in the country of residence.

This example is also comparable to illustration (b) in Paragraph 11 of the 2003 OECD Commentary:

performance fee	60,000	
production expenses	– 35,000	(directly related to performance)
indirect expenses	– 20,000	(yearly expenses, divided over performances)
salaries for musicians	– 27,000	(monthly salaries, divided over performances)
remaining balance for orchestra	– 22,000	(to be subsidized)
Unlimited approach		
country of performance: source tax		
20% x 60,000 (performance fee) =	12,000[a]	
residence country: income/corporation tax		
35% x 27,000 =	9,450	
tax credit (max.)	– 9,450	
balance to be paid in residence country	0	
excessive taxation: 9,450 – 12,000 =	– 2,550	
Limited approach		
country of performance: source tax		
20% x 27,000 salaries =	5,400	
residence country: income/corporation tax		
35% x 27,000 =	9,450	
tax credit	– 5,400	
balance to be paid in residence country	4,050	
excessive taxation: 5,400 – 5,400 =	0	

a. Assuming that the country of performance does not tax an equal part of the exploitation subsidy of the orchestra. See 4.3.9. for a discussion about the taxation of subsidies.

The conclusion for example (2b) is the same as for example (1).

(3) *Top artiste with a personal company, both residing in tax havens*

A top artiste has decided to move personally to a tax haven and to incorporate his personal company there. This company receives performance fees from various countries and pays the artiste a salary for his personal activities.

This example is comparable to illustration (c) in Paragraph 11 of the 2003 OECD Commentary:

performance fee	150,000	
direct expenses	– 60,000	(directly related to performance)
indirect expenses	– 30,000	(yearly expenses, divided over performances)
salary for artiste	– 20,000	(monthly salary, divided over performances)
remaining profit for artiste/ shareholder	40,000	
Unlimited approach		
country of performance: source tax		
20% x 150,000	30,000	
residence country: income/corporation tax		
0% x (20,000 + 40,000) =	0	
tax credit (max.)	– 0	
balance to be paid in residence country	0	
average tax rate on income:		
30,000 / (20,000 + 40,000) =	50%	

Limited approach

the same result as for the unlimited approach, because Article 17(2) can be used as an anti-abuse provision

The conclusion is that there is no excessive taxation in this example (3), because of the absence of taxation in the residence country.

9.2.4. One extra example: no source tax in the country of performance

One more calculation can be made for the situation where no source tax has been paid in the country of performance. This can happen in countries such as Ireland or Denmark that do not levy a source tax on performance income of non-resident artistes, but also in countries where national tax rules are so generous that no source tax is due or where a (more than) full deduction of expenses is possible.

A US artiste puts on two shows in Denmark. His fees are 20,000 and his direct expenses are 10,000. Denmark does not have a source tax in its tax legislation, so no Danish tax is deducted from the performance fee, nor does the concert promoter pay any Danish tax on top of the performance fee.

In the United States, the foreign earnings and expenses are reported in the artiste's income tax return as part of his worldwide income and a total taxable income of 150,000 remains. This leads, after personal allowances, to 30,000 of income tax, on average 20% of the taxable income. No foreign tax credit is granted, because no Danish tax was levied.[22]

gross fee in country of performance	20,000
expenses for performance	– 10,000
profit	10,000
withholding tax rate (from gross fee)	0%
withholding tax	0
effective tax rate (from profit)	0%
world income in residence country	150,000
total tax in residence country	30,000
average tax rate in residence country	20%
maximum tax credit in residence country	0
excessive taxation	0

The conclusion is that there is no excessive taxation in this extra example, because of the use of the foreign tax credit in the residence country. This country has a secondary right to raise tax for the difference between its own (progressive) tax rates and the withholding tax in the source country. Since the source country does not levy any tax, the residence country applies normal taxation to the foreign income.

22. Inevitably, there is no difference between the unlimited and limited approach here.

9.3. Results from these examples

9.3.1. Too heavy taxation in the country of performance

The first three examples in 9.2.2. lead to the conclusion that the risk of excessive taxation is very real for international performing artistes, even when the effect of possible differences in tax rates is taken into consideration. The main reason is that the national tax rules for non-resident artistes in most countries, i.e. a moderate, flat tax rate, but taken from the gross performance fee without the deduction of expenses, result in a higher tax obligation than for other non-resident taxpayers or residents. The *average* tax rates on the profits in the source country were 26% (small artiste), 50% (medium artiste) and 70% (big artiste), which is much higher than for comparable resident and non-resident taxable persons.

9.3.2. The reversal in the 1992 Commentary hits the wrong target

The next four examples in 9.2.3. show that the change in the 1992 Commentary to the unlimited approach of Article 17(2) leads to excessive taxation internationally.[23] Calculations are made for both the limited and the unlimited approach.

In the examples (1), (2a) and (2b), the artistes and their managements or companies are residents of a tax treaty country and are normally subject to tax in that country. With the limited approach the source tax would only have been taken from the actual salary or profit payments to the performing artistes and not from the profit element of the third party. A tax exemption or credit would then fully compensate the source tax. But the change to the unlimited approach, giving the countries of performance the right to tax everything, i.e. the full performance fee, regardless of who receives it, leads to a source tax that is too high to be compensated by a tax credit in the residence country. The conclusion is justified that this unlimited approach[24] does not eliminate double taxation.

23. See 2.12. and 2.13. about the historical background of the reversal in the 1992 Commentary on Article 17 of the OECD Model Tax Convention and the preparatory work of the 1987 OECD Report.
24. In combination with the non-deductibility of expenses in the source country.

Example (3), with the top star and his personal company both residing in a tax haven, leads to the remarkable conclusion that the change from the limited to the unlimited approach makes no difference to tax avoidance schemes. There are no tax treaties with tax havens and therefore neither Article 17(2) of the OECD Model Tax Convention nor the 1996 US Model Tax Convention applies and a reversal in the approach of Article 17(2) does not affect the taxation in the source state. Tax avoidance schemes can only be countered with sufficient artiste tax rules in the source country. The limited and unlimited approaches in example (3) lead to the same result, while the source tax, at the more than sufficient rate of 50% from net performance income, makes the difference in this example!

The conclusion after these examples is that the unlimited approach of Article 17(2) of the OECD Model Tax Convention hits the wrong target. The reversal from the limited approach in the 1977 Commentary to the unlimited approach in the 1992 Commentary[25] has been useless, even pernicious. In practice, normal artistes, companies or other artiste organizations, which are resident in a normal treaty country under normal employment circumstances together with their employees, suffer heavily from the eye-catching stars and their flashy advisers. These normal artistes experience an excessive tax burden, while the result for artistes in tax havens is unaffected.

The change from the limited approach in 1977 to the unlimited approach in 1992 was not needed. The original limited approach, which is also used in the 1996 US Model, seems to be more balanced.[26]

9.3.3. Small risk of undertaxation or even double non-taxation

The last example in 9.2.4. shows that the risk of undertaxation or even double non-taxation is not very likely if the country of residence uses the (ordinary) tax credit method from Article 23B of the OECD Model Tax Convention as the method for eliminating double taxation. The OECD recommends the use of the credit method in Paragraph 12 of the 2003

25. The reversal in the 1992 Commentary was initiated by the 1987 OECD Report.
26. See 2.14. for the reasons why the United States wants to deviate from the OECD Model Tax Convention regarding this subject.

Commentary on Article 17 of its Model Tax Convention.[27] When no foreign-source tax is levied, the country of residence simply does not give any tax credit against the tax on worldwide income.

Nevertheless double non-taxation is still possible if either an (older) tax treaty uses the exemption method in Article 23, *or* if the country of residence unilaterally applies the exemption method to active foreign-source income, including the foreign performance income of artistes. In chapter 7 it was explained that the continental European countries in particular initially used the exemption method when they built up their treaty networks, but that most of these countries now follow the recommendation of the OECD to apply the tax credit method to artistes and their performance income. These countries may still have the tax exemption method in their older tax treaties, but replace it by the tax credit method when the treaty is renegotiated.[28]

Only a few continental European countries apply the exemption method in their national tax rules to all active foreign-source income, irrespective of what has been agreed in the bilateral tax treaty.[29] Artistes residing in these countries can still "enjoy" the advantage of double non-taxation if the country of performance does not levy any source tax.

9.3.4. Excessive taxation can turn into double taxation

In 7.5. a list of tax credit difficulties was given. Even if resident artistes are entitled to a tax credit (or exemption) for tax that has been levied abroad, it can be problematic to obtain that tax credit. These practical difficulties can be the absence of a tax certificate showing the foreign income and the foreign tax, the qualification of the foreign tax (VAT, municipal, state tax), whether the foreign tax is final and compulsory, whether the artiste is an individual or a company who has actually paid for the foreign tax (artiste or organizer), in what year the foreign tax can be credited, against which taxes in the residence country a credit is possible and other complexities. If

27. The 1996 US Model Tax Convention does not give a recommendation, because the United States only recognizes the tax credit method as the proper way to eliminate double taxation.
28. See 7.3.2. for the change in tax treaty policy of the Netherlands. After 1980, the Netherlands has only used the tax credit method in its bilateral tax treaties.
29. An example is Belgium, which does not recognize the tax credit method for active foreign-source income. In 7.5.1. it was mentioned that tax advisers therefore consider Belgium as a "tax haven" for artistes (and sportsmen) who perform all over the world.

any of these difficulties lead to a refusal of the tax credit by the tax authorities in the country of residence, the risk of excessive taxation is overshadowed by the appearance of double taxation, because the artiste pays the full amount of tax in both states.

9.4. General discussion and conclusions

The risk of *excessive taxation* is very real for international performing artistes. The eight examples of this chapter show that the strict national artiste tax rules and the unlimited approach of Article 17(2) of the OECD Model Tax Convention lead to a higher than normal tax burden in the countries of performance. The effective tax rates on the profit of performances by non-resident artistes (50% and 70% in the examples (2) and (3) in 9.2.2.) are higher than the highest marginal tax rate in the source country's income tax table.

On the other hand residence countries restrict the tax credit to the (average) amount of tax that is due on the foreign performance income. This in accordance with Article 23B of the OECD Model Tax Convention, but increases the problem of international excessive taxation. That maximum gives the same compensation as the tax exemption method would give. Artistes living in countries using the exemption method are no better off, because the exemption method gives the same result as the maximum of the ordinary tax credit.

Not only are the tax rates in the countries of performance too high, the reversal of Article 17(2) to the unlimited approach in the 1992 OECD Commentary also hits the wrong target. The examples in 9.2.3. show that the unlimited approach does not give an extra defence measure against tax avoidance schemes, but on the contrary taxes artistes in tax treaty countries more severely than the limited approach.

The risk of *undertaxation* or double non-taxation is small, because most countries follow the proposal from Paragraph 12 of the 2003 OECD Commentary on Article 17 to insert the tax credit method in their tax treaties. The example in 9.2.4. shows that a missing source tax in the country of performance does not lead to any overall tax advantage for the performing artiste.

Double non-taxation is still possible if a tax treaty uses the tax exemption method of Article 23A of the OECD Model Tax Convention, but most countries have changed their tax treaty policy and since 1977 inserted the tax credit method in their tax treaties. Only a few countries apply the tax exemption method unilaterally to active foreign-source income. Artistes residing in these countries can sometimes still benefit from double non-taxation.

The conclusion of this chapter is that the risk of excessive taxation (and even double taxation) for international performing artistes is very real and much higher than the risk of undertaxation (or even double non-taxation). The risks are higher for artistes than for other taxable persons.