
CHAPTER 10

TAX REVENUE AND ADMINISTRATIVE BURDEN

10.1. Size of the contribution to a state's budget

The literature does not make clear whether the tax revenue from non-resident artistes is important to performance countries. Performance fees, either fixed or variable, are sometimes quite high and countries may want to take “a piece of the pie” of the top stars. But it is unclear whether this taxation makes a worthwhile contribution to a country's state budget. And it has not been investigated whether the collection of the tax revenue in combination with the administrative obligation for the artistes is effective when compared with the tax revenue generated. This chapter provides more information about this subject.

Not only the tax revenue in the country of performance but also the tax credits or tax exemptions in the country of residence will be discussed.

There is not very much information available about the tax revenue of this specific group of taxpayers. Detailed information which makes the size of the tax revenue in this country reasonably clear and reliable comes from two sources in the Netherlands, and revenue figures are available from the United Kingdom, Australia and New Zealand. These are less precise but give a general indication of the importance of the revenue from non-resident artiste taxation in these countries.

None of the countries specifies a difference in their figures between non-resident artistes and sportsmen, so the tax revenue which is mentioned comes from both groups of taxpayers.

10.2. Calculation of the tax revenue in the Netherlands

10.2.1. Two reliable sources

The tax revenue from non-resident artistes in the Netherlands can be calculated with information from two reliable sources:

- first, the survey on the expenses of non-resident artistes in the Netherlands in the years 2001-2003¹ includes the nominal amounts of performance fees. Taken together with the deductible expenses and an estimate of the size of the market, these enable the tax revenue to be calculated; and
- second, the Dutch Ministry of Finance has issued an evaluation of the artiste (and sportsman) tax rules in the Netherlands, including some figures about tax earnings and the influences of deductions for expenses. The total tax revenue can be calculated from these figures.

Neither source gives figures for non-resident artistes in a normal employment situation for a Dutch employer, e.g. a musician with a normal employment contract with an orchestra or a dancer with a dance company. The special tax rules for non-resident artistes do not apply to artistes/employees; their tax status is the same as that of other non-resident employees. Therefore, only figures for self-employed, non-resident artistes in the Netherlands, either as individuals or in groups,² are included.

10.2.2. Extrapolation of the Dutch study on expenses

The study on the expenses of non-resident artistes in the Netherlands gave a total of performance fees for the years 2001-2003 of EUR 46.6 million, on average EUR 15.5 million per year. According to information from the Dutch tax administration the applications in the study reflect 50% of the total market of non-resident artistes and sportsmen, leading to an average of performance fees of EUR 31 million per year. Taking into consideration the weighted average of production for the wide variety of artistes, the calculation of the tax revenue for the Netherlands will be as follows (in million euro):

Tax revenue in the Netherlands (1)		Rate (%)	Tax revenue
gross performance fees	31.0	20	6.2
deduction of expenses – 75%	– 23.3	20	– 4.7
profit on performances	7.7	20	1.5

1. The survey was discussed in chapter 8 of this thesis.

2. These groups can have non-resident artistes as employees, but still fall under the special non-resident artiste tax rules because the contractual relationship between the Dutch organizer and the self-employed, non-resident group is taken into account.

10.2.3. Evaluation of the Dutch artiste and sportsman tax system

The evaluation of the artiste and sportsman tax rules in the Netherlands³ provides figures about the tax revenue in the year 2002. It shows that there is a division in the arts and sports world regarding applications for the deduction of expenses. These applications are almost exclusively filed in the arts world, leading to lower tax obligations for non-resident artistes, but virtually non-existent in the sports world, where non-resident sportsmen pay the full amount of tax from their gross earnings. These figures can be summarized as follows (in million euro):

Tax revenue in the Netherlands (2)		Rate (%)	Tax revenue
performance fees (without applications)	15.5	20	3.1
performance fees (with applications)	18.0	20	3.6
gross performance fees	33.5		6.7
deduction of expenses	- 11.6	20	- 2.3
total taxable fees non-domestic	21.9	20	4.4

The tax revenue of EUR 4.4 million would have been considerably lower if applications for deduction of expenses had been made for all performance fees (EUR 18.0 + 15.5 = EUR 33.5 million). Where the average of deductible expenses for the Dutch tax administration had been $11.6/18.0 = 64\%$, the following adjustment can then be calculated, taking the weighted average of 64% expenses into consideration: EUR 33.5 million minus 64% = EUR 12.0 million. EUR 12.0 million \times 20% = EUR 2.4 million (= - EUR 2.0 million) tax revenue.

10.2.4. Conclusions for the Netherlands

These figures come from two different sources, but lead to almost the same results. It must be concluded that the tax revenue generated in the Netherlands by the special artiste and sportsman taxation lies between EUR 1.5 million (minimum) and EUR 6.7 million (maximum). These

3. See 6.4.; "Evaluatie van de artiesten- en beroepssportersregeling", *Ministerie van Financiën*, 12 May 2004, WDB 2004-00270M; discussed in Dick Molenaar, "De illusies van de artiesten- en beroepssportersregeling", *Weekblad voor Fiscaal Recht* 2004/6587, at 1111.

figures indicate very clearly that the tax revenue declines steeply when production expenses for artistic performances are deducted.

Both the minimum and the maximum yearly tax revenue are a very small contribution to the state budget of the Netherlands, a country with 16 million citizens. Total tax revenue in the Netherlands is approximately 100 billion euro per year, which means that the tax revenue from non-domestic artistes and sportsmen varies between 0.0015% and 0.0067% of the total tax revenue of the country.

10.3. Tax revenue in other source countries

10.3.1. Figures from three countries

Information is also available from other countries about the tax revenue of non-resident artistes and sportsmen. These countries are the United Kingdom, Australia and New Zealand, and although the figures are not as detailed as those from the Netherlands, they show similar results. For these three countries the tax revenue from this specific group of taxpayers is also compared with the total tax revenue of the country involved.

These three countries also have special tax systems for non-resident artistes (and sportsmen) in which expenses can be deducted before the performance takes place and a normal income tax return is possible (or even obligatory) after the end of the taxable year. None of these countries makes a distinction between the tax revenue of non-resident artistes and sportsmen.

10.3.2. United Kingdom

In 1986 the United Kingdom started the Foreign Entertainers Unit (FEU), a special unit of the Inland Revenue which deals exclusively with the taxation of non-resident artistes and sportsmen. This unit employs 25 people. A senior officer at the FEU has explained to various UK accountants that the revenue varies between GBP 25 and 30 million per taxable year.

The United Kingdom has 50 million citizens and collected a total tax revenue of GBP 266 billion for the year ending at 5 April 2004.⁴ This

4. Source: www.hmrc.gov.uk.

means that the tax revenue from non-resident artistes and sportsmen in the United Kingdom is between 0.009% and 0.011% of the United Kingdom's total tax revenue.

10.3.3. Australia

Australia also allows non-resident artistes and sportsmen to deduct their expenses before a performance. Applications can be made to the Australian Taxation Office (ATO), which also handles the income and corporation tax returns at the end of the year. The ATO established a special Visiting Sportspersons and Entertainers (VSE) team in 1998, mainly for the 2000 Sydney Olympic Games.

Tax revenue in Australia has been on average AUD 25 million per year for some years, but rose to AUD 29.1 million in the year 2002.⁵

Australia has 20 million citizens and collected a total tax revenue of AUD 257 billion for the year 2003/04.⁶ This means that the total tax revenue from non-resident artistes and sportsmen in Australia is between 0.010% and 0.011% of the total tax revenue in the country.

10.3.4. New Zealand

New Zealand also allows non-resident artistes and sportsmen to deduct their expenses before a performance. Applications can be made to the Non Resident Entertainers Unit of the Inland Revenue, which is based in Auckland. This special department also handles tax returns at the end of the year. The Non Resident Entertainers Unit has explained that it is difficult to track the exact amount of withholding taxes paid by non-resident entertainers because they are not required to have any Inland Revenue tax numbers. But it has mentioned that the Inland Revenue in New Zealand could collect somewhere between NZD 5 and 10 million per year, although it has noted that this is just an approximate figure.

5. Both figures are mentioned in the Audit Report 57 (2002-03), *Administration of the Payment of Tax by Non-Residents*, published by the Australian Taxation Office, source: www.anao.gov.au.

6. Source: www.abs.gov.au/ausstats.

New Zealand has 4 million citizens and it collected a total tax revenue of NZD 38 billion for the year 2003/04.⁷ This means that the total tax revenue from non-resident entertainers in New Zealand may be between 0.013% and 0.026% of the total tax revenue in the country.

10.4. A weighted average of tax revenue for the four countries

The figures from the four countries can be brought together to calculate a weighted average tax revenue. When compared to the total tax revenue of the countries concerned, the tax revenue from non-resident artistes and sportsmen varies from a minimum of 0.0015% in the Netherlands, in a situation where all expenses are deducted and a flat rate of 20% withholding tax is used, to a maximum of 0.026% in New Zealand, although the tax authorities in this country did not make more than an estimate of the tax revenue from non-resident entertainers.

The lower figures for the Netherlands are a result of the special regulation that non-resident artistes are not obliged to file a normal income tax return at the end of the year but can use the 20% withholding tax as their final tax obligation.⁸ This is different from the other three countries, the United Kingdom, Australia and New Zealand, which allow the deduction of expenses on the strict condition that a normal tax return is filed at the end of the year, to which normal tax rates are applied. These rates start at a normal level of approximately 20% and go up to 40% in the United Kingdom, 47% in Australia and 45% in New Zealand.

With the figures from the preceding paragraphs the weighted average of the tax revenue of these four countries can be calculated. For this calculation the size of the total tax revenue of each country plays an important role. The size of e.g. the United Kingdom will have a more significant effect on the weighted average than the size of e.g. New Zealand. A weighted average makes the outcome more reliable.

7. Source: *Delivering our outcomes*, New Zealand Inland Revenue – Annual Report 2004, www.ird.govt.nz.

8. See 6.6.

10.5. Tax credits or tax exemption in the residence country

Tax revenue from non-resident artistes and sportsmen

	%			billion		million EUR average	% average
	min	max	average	total	EUR total		
Netherlands	0.0015	0.0067	0.0041	EUR 100	100	4	
United Kingdom	0.009	0.011	0.0100	GBP 266	372	37	
Australia	0.010	0.011	0.0105	AUD 257	162	17	
New Zealand	0.013	0.026	0.0195	NZD 38	22	4	
					656	63	0.01

This calculation shows that the tax revenue from non-resident artistes and sportsmen in the four countries – the Netherlands, the United Kingdom, Australia and New Zealand – is a (weighted) average 0.01% of the total tax revenue in these countries.

The conclusion from this calculation is that the taxation of the performance fees of non-resident artistes (and sportsmen) does not make a significant contribution to a country's budget.

10.5. Tax credits or tax exemption in the residence country

It is also important to realize that the source tax in the country of performance leads to a tax exemption or tax credit in the country of residence. This was discussed in chapter 7. This means that every country has on the one hand the tax revenue from non-resident artistes (and sportsmen), but on the other hand allows a tax reduction for its resident artistes (and sportsmen) for their foreign source income.

The tax credits (or exemptions) for the foreign income of resident artistes reduce the tax revenue of a country. Therefore the total effect of the allocation rule of Article 17 and the elimination rule of Article 23 of the OECD Model Tax Convention on the tax revenue of a country is much lower than the calculations made in the preceding paragraphs.

For some typical “entertainment exporting” countries, such as the United States and the United Kingdom, the balance of the tax revenue might even become negative. In these countries the “claimed” tax credits for resident artistes for foreign tax can exceed the “earned” tax revenue on source income from non-resident artistes.

For other, more “entertainment importing”, countries, such as the Netherlands and Germany, the balance will be positive but much lower than the tax revenue that was calculated in the preceding paragraphs.

In general, the balance needs to be zero, because in an ideal world the source tax in the country of performance needs to be followed by a complete compensation, tax credit or tax exemption, in the country of residence. But unfortunately, this ideal world does not exist and some tax revenue will remain in most countries. There are three reasons for this (1) international performing artistes experience excessive taxation, because of the non-deductibility of expenses and the unlimited approach of Article 17(2), as shown with the examples in chapter 9, (2) international performing artistes experience tax credit problems in their residence country, which lead to double taxation, as explained in 7.5., and (3) some artistes and sportsmen will still decide to live in a tax haven and the taxation of their performance income in the source state will not be compensated by a tax credit in their residence country, because that country will not levy any income tax.

The conclusion is that this balance leads to some tax revenue, but that the result is a negligible contribution to countries’ financial budgets. And it is mainly raised by inefficiencies in the tax systems, both in the country of performance and in the country of residence.

10.6. Administrative burden

Non-resident artiste tax can only be collected at a high administrative expense. At least four parties (besides the artiste himself) are involved in the process of the taxation in the country of performance and the foreign tax credit in the country of residence:

- (1) tax advisers or accountants in both the country of residence and the country of performance;

- (2) the tax administration in the country of performance, which needs to set up a special tax department for non-domestic artistes and sportsmen with knowledge about this special group of taxpayers;
- (3) the promoters of the concerts, theatre plays and sports tournaments, who need to withhold the tax and declare it to the tax authorities, as well as to provide non-domestic artistes or sportsmen with correct and reliable tax certificates; and
- (4) the tax authorities in the country of residence, who need to check whether the foreign tax credit claimed is based on the correct information about the foreign-source tax.

These administrative costs will be high, but unfortunately no exact figures are available. But for small and medium artistes, the administrative costs will be disproportionate if compared to performance income, especially when performances have taken place in various countries. These costs will be an obstacle to international artistes making use of their rights in both the source and the residence country.⁹ Practical evidence from Germany, the Netherlands and the United Kingdom supports this conclusion. But the tax authorities also complain about the administrative burden on their side.¹⁰

10.7. General discussion and conclusions

The Dutch survey on expenses for the years 2001-2003, which was presented in chapter 8, provides interesting information from which the revenue from non-resident artiste taxation can also be calculated. By coincidence, the evaluation of the Dutch artiste (and sportsman) tax rules, which was published in spring 2004, also gives figures about the size of the market and Dutch tax revenue.

The figures from these two sources are comparable and the conclusion is that the Dutch tax revenue from non-resident artiste and sportsman taxation lies between EUR 1.5 and 6.7 million per year. The variations are

9. See Harald Grams, "Artist Taxation: Article 17 of the OECD Model Treaty – a Relic of Primeval Tax Times?", 27 *Intertax* (1999), at 188.

10. Critical remarks have been made in the Netherlands about the administrative burden in the official publication "Evaluatie van de artiesten- en beroepssportersregeling", Ministry of Finance, 12 May 2004, *WDB* 2004-00270M. This has been discussed in Dick Molenaar (2004), at 1111.

due to the fact that not all artistes (and sportsmen) apply for the deduction of their expenses.

Three other countries have also published figures about the tax revenue from their non-resident artiste and sportsman tax system, i.e. the United Kingdom, Australia and New Zealand. The information comes from the tax authorities and therefore seems quite reliable, although the figures from New Zealand are only approximate. The tax revenue varies from GBP 25-30 million in the United Kingdom (0.009%-0.011% of total tax revenue), AUD 25-29 million in Australia (0.010%-0.011% of total tax revenue) to NZD 5-10 million in New Zealand (0.013%-0.026% of total tax revenue).

When these figures are brought together with the Dutch tax revenue figures, a weighted average can be calculated for the four countries; i.e. the tax revenue from non-resident artistes and sportsmen is 0.01% from the total tax revenue in these countries. The conclusion from this calculation is that the taxation of the performance fees of non-resident artistes (and sportsmen) does not make a significant contribution to a country's budget.

The country of residence, on the other hand, needs to allow a tax credit or tax exemption to resident artistes for their foreign performance income. Ideally, this tax credit or tax exemption would almost compensate the tax revenue in the source country, but because of various problems, the tax credit or exemption can be insufficient or even absent. Besides that, there will be a positive result from the source taxation of artistes living in a tax haven. Therefore the source tax will be somewhat higher than the tax credit or exemption, but the balance will be very small. The conclusion is therefore that the total tax revenue from international performing artistes is negligible.

The administrative burden on artistes as well as on the tax administration is quite high, because much work needs to be done in both the performance and the residence country, not only for the artistes but also for the tax administration.

When the combination of these elements is considered, it must be concluded that the allocation rule of Article 17 of the OECD Model Tax Convention, with source taxation in the performance country and tax credit in the residence country, is not very cost effective, because it brings in a negligible tax revenue at a high administrative expense. Therefore, the

tax revenue obtained from international performing artistes cannot be used as a valid reason to justify source taxation in the country of performance.

Moreover, the negative side from the allocation of the taxing right is that the administrative burden for both the artistes and the tax authorities (in both countries) presents a considerable obstruction to the mobility of international artistes.

