



INTERNATIONAL ASSOCIATION OF YOUNG LAWYERS

Income tax for professional athletes and artists - a cross border story

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National Report of Denmark

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1. Introduction

This questionnaire concerns athletes /artists performing missions in countries other than their country of residence, for longer periods or for only short events.

Frequently, athletes / artists ' income is arranged in a certain manner for the purpose of tax efficiency. Such arrangements may involve performing the missions under the name of a company owned by the athlete / artist or by performing the mission as an employee. The first issue relevant for this questionnaire is what fiscal impacts such arrangements have.

The fees for athletes / artists' performances often consist of several components. Athletes regularly achieve signing bonuses before any performance is completed, followed by rewards when performance has been completed and incentive bonuses following successful execution. Moreover, athletes /artists regularly have endorsement income in connection to sports or arts events. The second issue addressed in this questionnaire is which of those components are covered by the regulation.

How is the covered income taxed? The third issue to address is how the found income of the athlete/artist is taxed and who is affected by the taxation.

Since the issue involves more than one country, the questionnaire further addresses the issue of double taxation. The final issue concerns how the issue of double taxation generally is handled.

Finally, athletes and artists may have income for their image rights. The last part of the questionnaire is related with the regulation for the image rights in your country.

2. General questions

- a) Is there any special tax legislation applying to athletic/artistic performances completed by athletes/artists residing outside the country of performance?

According to the Danish Withholding Tax Act there is a special tax scheme for foreign researchers and key employees (highly paid employees) who are recruited abroad and who are employed by a Danish enterprise or research institution. The scheme applies to all sectors and to both Danes and foreigners.

Please describe these tax regime(s) briefly.

- As an employee, you must *not* have been fully liable to taxation in Denmark or subject to limited tax liability on earned income etc. or commercial income within the last 10 years prior to your employment.

- As an employee, you must *not* have been directly or indirectly involved - within the past 5 years prior to your employment - in the management of or have had control or significant influence over the enterprise where you are being employed.
- the salary, on average, must amount to not less than DKK 60.600 a month before deduction of labour market contributions and tax but after deduction of labour market supplementary pension fund (ATP) contributions.

The total salary is subject to 26% taxation. The total salary includes the monetary remuneration, value of free car, free telephone, free internet connection.

The tax is levied on the total salary income without deductions of any kind.

Please note that if the above mentioned criteria's is not met the athlete / artist will be subject to general applicable Danish tax legislation.

- b) If so, who is covered by the legislation? (natural/legal persons?)

The tax scheme is only available to natural persons.

1. Commercial constellations

- c) What are the tax implications when payment for an individual athlete / artist 's performance is made to a company owned by him?

First of all please note that according to Danish tax legislation it is permissible for an individual athlete / artist to own a company and use said company as recipient of payment.

Under the premise that Denmark is not entitled to withhold tax according to a relevant double taxation treaty the tax implications for payment to a company based in a foreign country for an individual athlete / artist's performance is dependent on whether or not the payment originate from an employer established in Denmark or a Danish permanent establishment as such entities are required to withhold taxes when paying out salaries.

If the payment does not originate from an employer established in Denmark or a Danish permanent establishment and under the premise that there are no relevant double taxation treaty in place Denmark would not be entitled to withhold tax.

- d) Who is taxed on compensation for an athlete/artist's performance, when it is paid to a company in which the athlete is employed?

Under the assumption that the company in question is the true recipient (a Danish term developed in tax practice - “rette indkomstmodtager”) of the compensation then the company will be taxed.

- e) Is the company’s business as a whole of any relevance for the assessment of the questions above?

No

- f) Is it relevant for the answers above whether the company conducts further activities or has more employees?

No

- g) Would the answer be different if the compensation could be attributed to the performance of an athletic team or an artistic group?

No

- h) Is it of any fiscal significance if the international commitment extends to a long period of time?

Such commitment can constitute a Danish permanent establishment which are required to withhold taxes when paying out salaries either to a natural- or a legal person.

- i) **Income covered by the Taxable base**

- j) What kind of income is covered by the special tax legislation?

Please cf. answers provided under question a)

- k) Does the legislation limit the taxation to income from the sport /arts practice itself, or does it extend the taxable income to services performed in connection to sports or artistic events and assignments related to the athlete/artist’s sports career?

Neither the general nor the special tax legislation limits the income to sport / arts practice itself

- l) Does the income taxable include compensation for performances, endorsements, the sale of merchandise, and royalty, or other income related to the event?

Yes.

- m) Are signing bonuses included in the income covered by the special regulations?

Yes.

- n) What is the regulations take on incentive bonuses based on personal or team performance?

Incentive bonuses are included in the total computed personal income tax.

- o) Is endorsement income considered to be included in the compensation for the athletic /artistic performance and, if so, to what extent?

Yes - to full extend.

- p) Does the legislation limit the amount that an athlete / artist may receive from his employer in connection with assignment of image rights?

No

- q) What is the treatment your national legislation has for image rights in personal income tax?

Payments of royalties from Danish sources to a foreign recipient are liable to Danish withholding tax. However, please note that the Danish withholding tax on royalties does not apply to payments for the use of rights to literary, artistic or scientific work, e.g. author's royalties, music royalties and motion picture royalties. The withholding tax rate on the relevant royalty payments is 25 %.

However, for royalty payments to recipients residing in other jurisdictions covered by a double taxation treaty with Denmark the withholding tax rate will be reduced - in many treaties to zero as the double taxation treaty grants the exclusive taxation right to the state of the beneficial owner's residence.

Further, for payments to companies in other EU countries the Danish taxation must normally be waived according to the EU interest/royalty directive.

- r) From a tax point of view, are there any differences in the treatment of image rights between a resident athlete / artist and a non-resident athlete/ artist in your country?

Yes - the Danish tax system for individuals rests on the global taxation principle. The principle holds that the income of individuals with full tax liability is taxed in Denmark irrespective of whether the income is earned in Denmark or abroad. The income of individuals with full tax liability is classified as personal income, capital income and share income. Personal income includes salary, the taxable value of benefit in kind and royalties.

If the athlete / artist is a non-resident of Denmark please cf., the answers provided under q)

1. Tax rates

- s) What is the applicable tax rate?

Disregarding the special tax scheme for foreign researchers and key employees, the applicable tax rates in 2015 on personal income that does not exceed DKK 459.200 is in average app. 42 % while app. 56 % for income in excess of DKK 459.200.

On corporate income the applicable tax rate in 2015 is 23.5 %

- t) Does the tax rate differ depending on the sport practiced?

No.

- u) And in the case of artistic performances, does it differ?

No.

- v) Is the tax rate fixed or progressive?

The personal income tax is progressive.

The corporate income tax is fixed

- w) Does the legislation allow for deduction of costs with regard to the athlete / artist tax?

Yes – for example: Commuting deductions, food and accommodation deductions, double housekeeping expenses, privately established pension schemes, trade union fees, contributions to unemployment funds or other employee expenses are deductible from income.

- x) Does the taxed income serve as a basis for social security contributions?

Please note that actual Danish social security contributions are levied in the form of a series of fixed fees. The total contributed amount payable in Denmark per employee per year amounts to no more than approx. DKK 11.000.

- y) Who is responsible for the payment of the tax?

Employers established in Denmark or with a Danish permanent establishment are required to withhold taxes when paying out salaries. The employer can obtain information on the applicable withholding tax rate through employee's personal Danish electronic income tax card.

If the athlete / artists are self-employed they them self are responsible for the payment of the tax.

1. Double taxation treaties

- z) How is elimination of double taxation regarding athletes / artists generally implemented when there is a double taxation treaty? (exempt/credit/deduction).

In order to combat double taxation Denmark uses the OECD Model Tax Convention on Income and Capital when entering into a double taxation treaty. In general a double taxation treaty where Denmark is a party eliminates double taxation by virtue of credit. However please note that the elimination of double taxation can vary depending on the specific double taxation treaty in place.

- aa) How is the issue handled when a double taxation treaty does not exist?

Danish income tax credit provisions allow for a credit in the Danish tax payable for taxes actually paid in a foreign country if the foreign income is deemed taxable in Denmark on the basis of the residence of the taxpayer. An individual residing in Denmark will generally be considered liable to pay Danish taxes on his global income.

The credit granted amounts to the tax actually paid in foreign country provided this amount does not exceed the computed amount payable in Denmark on the same income. The credit cannot exceed the combined taxes actually paid in a foreign country.

- bb) Is there a limit amount for the income to be taxed?

No.