



INTERNATIONAL ASSOCIATION OF YOUNG LAWYERS

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

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National Report of Ireland

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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? Please describe these tax regime(s) briefly.**

There is no special Irish tax legislation applying to performances by non-Irish tax resident athletes or artists. However, the unpublished practice of the Irish tax authorities in respect of income arising for non-Irish tax resident artists from performances in Ireland is not to seek to impose Ireland's taxing rights should the income give rise to an Irish tax liability. This matter was alluded to in a parliamentary response by the then Irish Minister for Finance in 2009 to a parliamentary question raised in respect of the taxation of "visiting rock bands and performers". The Minister's response indicated that a withholding tax regime for Irish income earned by foreign artists was considered in the late 1990s but was not implemented

due to the small yield expected at the time. The matter was reviewed again in 2009 but no withholding tax regime has been introduced.

Published Irish Department of Finance papers prepared in connection with the 2009 review indicate that a withholding tax would be expected to result in a small yield, there would be disproportionate administrative and compliance and collection costs, and foreign artists might be discouraged from visiting Ireland if it was introduced. It is understood that the unpublished practice of the Irish tax authorities continues and it appears from the Irish Department of Finance papers that the practice applies also in respect of athletes. The papers indicate that the policy behind the practice of non-enforcement of Irish taxing rights is the perceived difficulty in enforcing an Irish tax liability should it arise.

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

Not applicable.

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?

Assuming that the company owned by the athlete or artist is not tax resident in Ireland, in order for the payment to come within the charge to Irish corporation tax the company must be carrying on a trade in Ireland through a branch or agency. The athlete or artist's presence and performance in Ireland could constitute a branch or agency which would bring the profits generated by that branch or agency into the Irish tax net.

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?

Absent a sham, Irish tax law should respect the legal form of the arrangements and should not look through the company to tax the employed athlete or artist.

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

The company's business as a whole is not of relevance in respect of the above responses.

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

No, it is not relevant.

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

It should not matter whether the performance relates to an athletic team or artistic group.

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

There is an increased likelihood that athlete or artist's non-Irish resident company could be considered to be carrying on a trade in Ireland if the commitment in Ireland extends for a long period of time. In addition, employment emoluments that are attributable to the performance of duties by an employee in Ireland are taxable in Ireland. There is a published non-statutory exemption from Irish payroll withholding tax (known as "PAYE" – Pay As You Earn) applied by the Irish tax authorities where the employee (the athlete or artist in this case) is tax resident in a country with which Ireland has a double tax treaty and does not work for more 60 days in Ireland in the calendar year. If the commitment in Ireland is of such duration that the athlete or artist will perform in Ireland for more than 60 days in a calendar year, then that exemption will not be available.

Income covered by the Taxable base

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

There is no special Irish tax legislation in respect of the matter.

j) 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?

Not applicable.

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

Not applicable.

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

Not applicable.

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

Not applicable.

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

Not applicable.

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

Not applicable.

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

Irish law does not recognise image rights unless the right in question is an identifiable intellectual property right, for example a registered trade mark or copyright. There are no specific provision in Irish tax legislation that addresses image rights for personal income tax.

- q) 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?**

There is no difference in treatment of image rights for Irish tax purposes that applies in respect of the residence of the athlete or artist.

1. Tax rates

- r) What is the applicable tax rate?**

An individual is subject to Irish income tax at the standard rate of 20% and the higher rate of 40%. A non-Irish tax resident company is subject to Irish corporation tax on income from a trade carried on through an Irish branch at the rate of 12.5%.

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

The sport practiced does not affect the relevant tax rate.

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

Likewise, the rate does not differ in respect of artistic performances.

- u) Is the tax rate fixed or progressive?**

The income tax rate is progressive in that a higher rate applies in respect of income above a certain threshold. The corporation tax rate is fixed.

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

There is no special legislation.

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

Given the unpublished practice of the Irish tax authorities not to enforce Irish taxing rights, Irish social insurance contributions should not apply in respect of income arising from the performance in Ireland by individual athletes or artists.

x) Who is responsible for the payment of the tax?

In the case of income tax, should it arise, the athlete or artist is responsible for the payment of the tax and filing of a self-assessed Irish tax return with the Irish tax authorities. The Irish Department of Finance papers mentioned above state that the Irish tax authorities have no record of any foreign entertainer registering for income tax in Ireland. In the case of corporation tax, the company is responsible for the payment of tax and filing of a self-assessed Irish tax return with the Irish tax authorities.

1. Double taxation treaties

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

Ireland's double tax agreements (72 have been signed to date) generally follow the OECD model convention and generally include an article similar to Article 17 of the model convention. However, given the Irish tax authorities unpublished practice of not enforcing Irish taxing rights in respect of athletes and artists, the issue of double taxation should not arise in practice respect of individual athletes or artists.

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

Not applicable.

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

Not applicable.