



INTERNATIONAL ASSOCIATION OF YOUNG LAWYERS

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

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**National Report of Turkey**

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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 tax legislation or taxation regime applying to athletes/artists residing outside of Turkey who realize an athletic/artistic performance in Turkey. Income obtained by the said athletes/artists is taxed as per the general Turkish taxation system.

In the Turkish taxation system there are two types of income that are taxed: personal income and corporate income.

A brief description of the aforementioned tax regime under Turkish law is provided below.

Personal income tax encompasses the earnings and revenues of real persons. Corporate income taxation on the other hand, regulates the taxation of institutions. Although both taxes are in relation to the taxation of the same economic element, they have been regulated under two different codes. Details regarding the principal elements and taxation process of personal income are stipulated in the Income Taxation Law numbered 193 (“**Income Tax Law**”) whereas corporate income is set forth under the Corporate Tax Law numbered 5520 (“**Corporate Tax Law**”).<sup>1</sup>

Income Tax Law is founded on the source principle and stipulates sources (components) of income subject to tax in a limited manner (numerus clausus). In accordance with the Income Tax Law Article 2, the personal income subject to taxation includes: commercial earnings, agricultural earnings, wages and salaries, self-employment earnings, revenues from immovable property, revenues from movable property and other earnings and revenues.<sup>2</sup> Therefore, in order to speak of personal income subject to taxation, it must fall within the scope of these types of personal income as specified under the Income Tax Law.<sup>3</sup>

Before specifically examining the taxation of athletes/artists, it will be beneficial to touch upon the basic elements of the system determined by the Income Tax Law:

- A system based on a calendar year declaration has been determined. In principle the taxpayer submits a declaration of his/her gross net personal income accumulated in one calendar year and will pay the tax amount as determined in accordance with their declaration.

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<sup>1</sup> It should be noted that another source which details the processes of taxation is the Taxation Procedure Law numbered 212 (10703 numbered Official Gazette dated 10.01.1961).

<sup>2</sup> What is meant by “other earnings and revenues” is not “all forms of earning which do not fall under the six types stipulated”. Other earnings and revenues consist of appreciation gain and incidental incomes.

<sup>3</sup> Öncel, 2011:245.

- A progressive tax tariff has been determined. The tax rate begins at 15 percent and increases up to 35 percent.<sup>4</sup>
- Tax liability is comprised of two types: Full liability and limited liability. Those persons within the scope of full liability are taxed on all personal incomes accumulated within and outside of Turkey. Those with limited tax liability are taxed only on personal income accumulated in Turkey. The principle element between the distinction of full and limited liability is “*having a domicile in or outside of Turkey*”. Having a domicile in Turkey in turn is determined by two criteria: residence and duration of living. Those who have a certified residence in Turkey and who live in Turkey continuously for more than six months in one calendar year are considered to have a domicile in Turkey and therefore, are regarded as fully liable.<sup>5</sup>
- In addition to the residency criterion, within a limited scope, a nationality criterion also applies regardless of their residency status. Turkish citizens who live abroad and work for the Turkish government, a Turkish governmental institution, or a company whose headquarter is in Turkey, are considered fully liable. Accordingly, they are subject to income tax on their worldwide income.

Non-residents are only liable to pay tax on their income derived from the sources in Turkey (limited liability). For tax purposes, it is especially important to determine in what circumstances income is deemed to be derived in Turkey. The provisions of Article 7 of the Income Tax Law deal with this issue.

- In principle, a system based on the declaration principle has been adopted for taxation of personal income. However, there is a deviation from this principle in regards to the taxation of wages and salaries. In this respect, it has been determined that such form of

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<sup>4</sup> The tariff segments applicable for the year 2015 as is below (Article 103 of Income Tax Law):

- 15% up to 12.000 TL
- 20% between 12.000 TL and 29.000 TL
- 27% between 29.000 TL and 66.000 TL (up to 106.000 TL for wage and salary incomes)
- 35% for exceeding 66.000 TL (exceeding 106.000 TL for wage and salary incomes)

<sup>5</sup> Article 5 of Income Tax Law has provided some leniency in regard to length of residency and has determined that under some circumstances, even after six continuous months of living in Turkey foreign persons will not be deemed to be residing in Turkey and therefore will not be subject to full liability.

personal income is to be taxed via the method of taxation at source (withholding tax).<sup>6</sup>

- Income Tax Law determines, in principle, that in cases where taxation at source (withholding) is utilized, fixed rates as stipulated by the law will be imposed instead of the progressive taxation tariff. Nonetheless, progressive taxation tariff rates will be applied to wage and salary incomes. An exceptional and different arrangement exists in relation to the personal incomes of athletes. Although such incomes are characterized as wages and salaries, they are taxed at fixed rates.
- Pursuant to the Corporate Tax Law; legal entities, which have their legal headquarters situated in Turkey, or whose operations and activities are managed in Turkey, are taxed on their world-wide income (unlimited liability) because these legal entities qualify as residents. Legal entities which qualify as non-residents are subject to tax only on their income derived in Turkey (limited liability). Self-employment earnings (professional service earnings) derived in Turkey by a non-resident legal entity; are also deemed to be limited liability.
- Declaration is accepted as the main method for the taxation of corporate income. However, there are situations in which the tax deduction at source method is also applied.
- In principle, corporate income tax is levied at 20% rate of corporate earnings in Turkey.
- According to Article 30 of the Corporate Tax Law; non-resident legal entities are subject to 15% withholding tax when they acquire professional service earnings in Turkey, provided that the said legal entities pay tax debt in cash or on pay on account. However, the Council of Ministers determines the respective rate as 20%.

In short, wages and salaries earned by the athletes are considered to be income, and taxed under the Income Tax Law. However, wages and salaries of the athletes are subject to an advantageous tax system and are taxed at fixed rates, instead of the progressive tax rates applicable to wages and salaries of other real persons.

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<sup>6</sup> The general details of taxation at source (those who are responsible for carrying out taxation at source, under what circumstances taxation at source will be applicable) are stipulated under Article 94 of Income Tax Law.

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

As stated under Question 3 (a) above, taxation of personal income and corporate income is regulated under different legislations. Personal income tax encompasses the earnings and revenues of real persons and is regulated under the Income Tax Law. Corporate income taxation on the other hand regulates the taxation of institutions and is regulated under the Corporate Tax Law. In brief, the answer may change considering the qualification of the person who obtains the income following the athletic/artistic performance completed.

### 3. Commercial constellations

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

In principle, in Turkey, corporate income tax is levied at 20% rate of corporate earnings.

According to Article 30 of the Corporate Tax Law; non-resident legal entities are subject to 15% withholding tax when they acquire professional service earnings in Turkey, provided that the said legal entities pay tax debt in cash or on pay on account. However, the tax rate determined by the Council of Ministers is 20%.

In this respect, where the payment of an individual athlete / artist is made to a company, the tax rates above shall apply. Performance payments to non-resident artists are made to the respective company in exchange for an invoice.

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

As indicated under Question 3(a), wages and salaries are taxed via the method of taxation at source. Article 61(6) of the Income Tax Law explicitly stipulates that “*transfer payment or other payments and other benefits provided to athletes*” are deemed as wage and salary income. In this scope, such personal incomes are taxed by way of taxation at source (withholding). Such tax amount is deducted from the personal income of foreign athletes by the sports clubs making the payments and the tax owed is directly paid to the tax office.

In the event that compensation is paid to a foreign company which qualifies as a non-resident corporation due to the artist's performance, the

compensation obtained by the said company is deemed to be a personal service earning. The company is obliged to pay corporate tax law by way of taxation at source (withholding).

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

No, the business type of the company is not relevant.

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

No, the activities or employee number is not relevant.

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

No, performance of an athletic team or an artistic group is not relevant.

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

No, the length of international commitment is not relevant.

#### 4. **Income covered by the Taxable base**

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

Regulations regarding wages and salaries as a form of personal income are stipulated in the Article 61 of the Income Tax Law and the Articles following thereafter.

In accordance with the relevant articles, wages and salaries can be shortly defined as monies and benefits provided to employees working under an employer in a specific workplace. The payment of wages and salaries as reimbursement, indemnity, grant, raise, advance, monthly contribution, premiums, bonuses, or under other names, will not affect the nature of this form of income. Subsequent to such definition, the Income Tax Law specifically determines some payment types as those which will be deemed to be wage and salary. Payments made to athletes are among those which have been individually and expressly determined. Therefore, payments made and benefits provided to athletes as transfer remuneration, or under any other names, are determined to be wage and salary income.<sup>7</sup>

All earnings derived from professional service activities are accepted as professional service income. A professional service is defined under the

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<sup>7</sup> Başaran/Atay, 2003:342

Income Tax Law as conducting non-commercial business for one's own name and account, without being employed by an employer, based on personal effort and occupational knowledge instead of capital. Artists giving a concert are explicitly listed as being considered to be free-lancers. Performances realized by artists qualify as professional service activity. Therefore, income obtained by artists is included in professional service earning. As per Value Added Tax Law numbered 3065, artistic performances realized by professional foreign artists are subject to VAT.

- b) 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?

With regards to artists, professional service income is taxed at fixed rates. There is no relevance with the career of artist and extent and value of the event in which artist performs.

However, in respect to athletes, the tax rate will be determined according to whether the sport is subject to a league system and if so, which division the athlete plays in.

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

Transfer payment or other payments and other benefits provided to athletes are deemed as wage and salary income. As stated under Question 3(a), wages and salaries and those considered as such which are made to athletes are taxed in an advantageous manner by withholding. "Wages and salaries" means transfer payments and payments and benefits provided by sports clubs under other names in return for the sports activities performed.

In light of this it should be noted that athletes may acquire incomes that do not fall within the above-mentioned scope. At times, athletes, if their name carries a marketable brand value, may be involved in sponsorship or endorsement relations independent from their sports clubs and may acquire income in relation to such activities.

If such income is acquired, the advantageous and special tax regime stated above will not apply. In other words, the personal incomes athletes acquire outside of the scope of the income they receive from sports clubs in return for their sports activities will be taxed according to general tax provisions. In such cases, the principal taxation regime will be in effect and such personal incomes will be taxed in accordance with the progressive tax tariff percentages and under the principle of annual declaration.



However, Article 29 of the Income Tax Law is an exception to the principle. According to the respective provision, prizes and bonuses provided for the purpose of motivating are excluded from the scope of personal income tax. In accordance with paragraph three of the provision, “*prize and bonus payments made to amateur athletes who participate in sporting events*” remain out of the scope of personal income tax.<sup>8</sup> The main criterion for the determination of professionalism or amateurism is whether the sports activity is being carried out for the purpose of earning income or not.<sup>9</sup>

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

In relation to athletes, signing bonuses qualify as a part of transfer payment and are deemed to be wages and salary income. Thus, they are taxed in an advantageous manner via withholding.

Payments made to artists under the name of signing bonus are included professional service income.

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

Bonuses given to athlete based on personal or team performance are also included in payments and benefits provided by sports clubs under other names in return for the sports activities performed. Thus, they are taxed in an advantageous manner by withholding.

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

Endorsements paid by sponsors to athletes due to displaying the sponsor’s name or products are outside of the scope of the income which athletes receive from sports clubs in return for their sports activities. Therefore, these are taxed in accordance with general provisions.

Endorsements obtained by artists are included in professional service income.

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

There is no limitation to the amounts that an artist may receive from his or her employer in connection with assignment of image rights.

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<sup>8</sup> Şirin/Arseven, 2012:48.

<sup>9</sup> Yatkın, 2006:45; Erkiner, 2007:70.

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

Athletes may acquire incomes that do not fall within the scope of income taxation as explained under Question 4(l) above. At times, athletes, if their name carries a marketable brand value, may be involved in sponsorship or endorsement relations independent from their sports clubs and may acquire income in relation to such activities. In line with this, such incomes may be validly transferred to clubs and will be subject to the general taxation.

- i) 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 the treatment of image rights between a resident athlete / artist and a non-resident athlete/ artist in Turkey.

## 5. Tax rates

- a) What is the applicable tax rate?

Provisional Article 72 has been added to the Income Tax Law with the law numbered 5766, and includes a system which is specific to and advantageous in regards to the taxation of athletes.<sup>10</sup>

In line with this:

Tax withholding of the percentages determined below will be imposed on wage and salary payments (and those considered as such) which are made to athletes until 31 December 2017.

- Sports which are subject to league systems:
  1. Top league: 15%,
  2. League below the top league: 10%,
  3. Other leagues: 5%,
- 5% for payments made to athletes who are not subject to the league system and payments made to national athletes in return for their participation in international sports tournaments.

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<sup>10</sup> This provision is not the first regulation in relation to this subject matter. Since the application period of the previous provisional article (Provisional Article 64 of Income Tax Law) elapsed by 31.12.2007, regulations similar in principle but with a few amendments have been added to the respective law. As the latest changes embody the imposition of different tax rates in accordance with the standing of the athletes it has been welcomed with the notion that “the principle of equality and justice has been kept in regard for the athlete at least” Boztaş, 2008:77.

The tax imposed in accordance with provisional Article 72 is characterized as a final tax.

Wages paid to amateur athletes are exempt from tax, provided that the wages do not exceed two times of minimum wage (Article 23 of Income Tax Law).

As per paragraph 2(b) of Article 94 of the Income Tax Law, for professional service activities as an artistic performance, the payment made to the artist is subject to withholding tax at the rate of 20%. With regards to artists subject to limited liability, the tax at the rate of 20% of the relevant professional service income must be deducted from the personal income. The said tax is also a final tax.

The VAT rate to be paid within the scope of artistic performances is set at 18%.

A yearly declaration for these personal incomes is not required. In the event a declaration is made in relation to other incomes, these incomes will not be included in the declaration.

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

The taxation regime does not change regardless of the sport. However the regime does change if the field of sports includes league system, or if the individual is occupied with the sports activity as a professional or amateur.<sup>11</sup>

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

No, type of artistic performances does not affect the tax rate to be applied.

- d) Is the tax rate fixed or progressive?

In relation to athletes, fixed tax rates are determined provided that the said rate may differ depending on the qualification of the athlete.

As a result of the compensation gained by a non-resident company due artistic performance, the corporate tax rate to be applied to the said income is fixed. If a payment is made directly to foreign artist, the tax rate to be levied on professional service income obtained by the said artist is also fixed.

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

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<sup>11</sup> Under the relevant legislation, the only professional field of sports in Turkey is determined as football. However, under the regulations enacted by federations of other fields of sport which are developing (such as the Turkish Basketball Federation) “actual professionalism” is also defined. Ertaş /Petek; 2005:223

No, there is no such deduction of costs determined for the tax to be paid by athletes/artists.

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

Under the framework of the system determined by the Social Security Law numbered 5510; the withholding method, as a form of liability is utilized for the payment of social security premiums of athletes as it is with taxation of their wage and salary incomes. Employers (sports clubs) who provide income to athletes which is characterized as wages and salary are obligated to make monthly payments of social security premiums. The employer is partially responsible for the social security premium payments and deposits a portion of this payment (which is not subtracted directly from the employees' wages and salary) while another portion of the payment is made under the name of the athlete and originates from the athletes' wages and salary.

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

Sports clubs as employer are responsible for paying the tax owed on behalf of athletes.

The withholding tax owed due to the performance completed by a foreign artist with limited liability is paid by the person who organizes the artistic event. The person who organized the artistic event is also responsible for the payment of VAT on behalf of a foreign artist with limited liability.

However, non-resident companies which obtained income derived from an artistic performance must make the payment on their own behalf.

## **6. Double taxation treaties**

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

Taxation of athletes and artists in relation to Agreements on Prevention of Double Taxation is, in principle, regulated within the scope of Article 17 titled "Artists and Athletes." These agreements consistently leave the authority of taxation of the personal incomes derived from sports and artistic activities of the athletes and artists residing in the country of the party state, to the country in which the athlete or artist is performing activities. Even in the event that the income obtained by the athlete/artist is directed at another person, the authority to tax will remain with the country

in which the athlete artist is performing sports/artistic activities.<sup>12</sup> However, the most important issue in this respect is to analyse the type of the liability to which a foreign athlete/artist is subject.

Turkey has entered into double tax treaties with 84 countries.

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

A foreign tax credit is not available to non-residents.

The tax amount allowed as a foreign tax credit for a resident is limited to the amount of tax to be paid in Turkey for the same amount of income. Accordingly, if the tax rate applied in the other country is greater than the tax rate applicable in Turkey the difference cannot be considered in calculating the foreign tax credit. The portion of the income tax corresponding to the earnings derived in foreign countries is calculated based on the ratio of such income to worldwide income.

To claim the foreign tax credit, both of the following conditions must be satisfied:

- The tax paid in the foreign country must be a personal tax levied on the basis of income.
- The payment of the tax in a foreign country must be substantiated with documents obtained from competent authorities and attested to by the local Turkish Embassy or Consulate, or if these institutions do not exist, by similar representatives of Turkey in that country.

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

No, there is no such limit.

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<sup>12</sup> There are agreements in which the taxation of the income acquired from these activities is to be carried out by the state sending the athlete to the event if the activities of the athlete are supported by public funds. Soydan, 2005:247; Kara, 2000:75,76; Şahin, 2011:147

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