



INTERNATIONAL ASSOCIATION OF YOUNG LAWYERS

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

**Tax Law Commission:**

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**General Report**

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**INTRODUCTION**

Athletes and artists often carry out performances outside of their residential country for long or short periods of time.

Remuneration for such performances commonly consist of several components such as signing bonuses before performance, rewards after completed performance and incentive bonuses following a successful execution. Moreover, athletes/artists regularly recieve endorsement income in connection to athletic- or artistic events.

This General Report is based on information in the National Reports received from the following countries:

- Brazil    Marcelo Diniz Barbosa
- Denmark    Arne Riis
- England and Wales                              Ceri Vokes and Phineas Hirsch
- Ireland     Philip McQueston
- Sweden    Johan Myrén
- Turkey    A.Ülkü Solak
- United States                                      Will Johnson

The General Reporters would like to take this opportunity to thank the National Reporters for their valuable contributions.

## 1. **Taxation of individual non-resident athletes/artists in general**

The majority of the countries covered by the national reports do not provide any special legislation solely applicable to non-resident athletes/artists. Only Sweden maintains a specific tax legislation which is specifically applicable to income deriving from athletic/artistic performances. Several countries however apply special taxation conditions to income received by non-resident athletes/artists.

- Brazil does not provide any special tax scheme to non-resident athletes/artists. The taxation in Brazil is solely dependent on whether or not an athlete/artist is to be considered resident or not, whereas athletes/artists are taxed according to the standard rules.
- Denmark provides a tax scheme which is applicable to non-resident researchers and key employees, including athletes/artists, who are recruited abroad and who are employed by a Danish enterprise or research institution. For the tax scheme to be applicable certain requirements have to be met, such as that the remuneration must amount to at least DKK 60,600.
- Ireland does not provide any special tax legislation for to non-resident athletes/artists. The Irish tax authorities however have an unpublished practice of not taxing non-resident athletes/artists for income received from performances in Ireland.
- Sweden maintains a special tax law for non-resident athletes/artists, which is applicable to remuneration deriving from athletic/artistic performances performed in Sweden. The special legislation for such income offers an advantageous flat tax rate. An artist who does not fulfill the non-resident requirements is however taxed according to the general taxation system.
- In Turkey, income obtained by non-resident athletes/artists is taxed according to the general Turkish taxation system. Non-resident athletes are liable to pay tax on income deriving from Turkey. Flat tax rates apply to wages and salary received by an athlete, as well as income received by an artist when giving a concert, while a progressive tax rate applies to other income received.
- The UK do not provide a special tax scheme to non-resident athletes/artists, but additional withholding tax rules apply to non-resident athletes/artists who perform in the UK. Tax is deducted from payment, usually at a rate of 20 percent. There are also certain tax exemptions in the UK for classical music performers and UK legislation has been introduced on an ad-hoc basis to provide tax exemptions in relation to particular athletic events held in the UK.
- In the U.S., athletes/artists are as a main rule taxed in on income deriving from U.S. sources, as well as on income from non-U.S. sources which are effectively connected with the active conduct of a U.S. trade or business.

## 1.1 Applicable Tax Rate

The majority of the countries covered by the national reports provide for flat tax rates as regards income from non-residents' athletic/artistic performances in the state. The taxation generally does not depend on the sport or the artistic performance. Turkey however applies different tax rates to athletes depending on the athletic league.

Moreover, the UK do not consider income from horse racing and greyhound racing etc or reimbursement for the expenses of performances by amateur athletes to be taxable. The UK tax authorities further treat sports stars differently depending on the sport in relation to testimonial matches, which can affect the status of income.

- In Brazil, withholding tax is applicable to non-resident athletes/artists at a flat tax rate of 15% or 25%, depending on the nature of the income. Non-resident athletes/artists are not allowed deductions.
- The Danish tax for non-resident researchers and key employees is a withholding tax with a tax rate of 26 percent. Deductions are not allowed for such individuals.
- 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%.
- The tax rate applicable to income received by non-resident athletes/artists in Sweden amounts to 15 percent on the taxable income. The provider of the compensation is liable for the payment. Deductions are not allowed.
- The tax rate applicable to non-resident athletes/artists performing activities in Turkey varies between 5 to 15 percent. Income derived from amateur athletic activities is exempt up to a certain amount. Income received by non-resident artists is subject to withholding tax of 20 percent. Deductions are not allowed.
- The personal income tax rate in the UK is progressive from 20 percent to 45 percent. The normal principles apply for the deductibility of expenses. The expense test for employed athletes/artists is however very strict, allocating solely expenses which wholly and exclusively are due to the performance in the UK, while the expense test for self-employed athletes/artists is less strict.
- The U.S. applies a withholding tax of 30 percent to income deriving from athletic/artistic activities by non-residents. Individual athletes/artists may however enter into Central Withholding Agreements, which reduce the otherwise applicable 30 percent withholding requirement to a lower amount that considers anticipated expenses and the ultimate level of tax the athlete/artist is likely to owe. The system in the U.S. allows cost deductions.

## 2. Commercial Constellations

As regards to taxation of athletic/artistic performances, the countries covered by the national reports generally respect commercial constellations where the remuneration is paid to a company owned by the athlete/artist or a company where the athlete/artist is employed, provided that the constellation is not a sham.

The tax implications for athletic/artistic companies are in neither of the countries dependent on the company's business as a whole, whether the company conducts further activities or the company's number of employees. It is neither relevant whether the remuneration received is attributed to the performance of an athletic team or an artistic group.

- An athletic/artist company which is non-resident in Brazil is taxed on income deriving from athletic/artistic performances in Brazil depending on the nature of the payment and on whether or not any double taxation treaty applies. The activity of a non-resident athletic/artistic company is generally not of great relevance when determining the taxation of the income.
- In Denmark, the tax implications for payments made to a company based in a foreign country for athletes/artists' performances are dependent on whether or not the payments originate from an employer established in Denmark or a Danish permanent establishment. Such entities are required to withhold tax when paying out salaries to a natural- and legal persons. The corporate tax in Denmark is 23,5 percent. If the payments do not originate from such an entity, Denmark is not entitled to withhold tax, provided that no relevant double taxation treaty applies.
- In Ireland, corporation tax of 12,5 percent may only be levied if the company carries on a trade in Ireland through a branch or agency. A company may be considered to carry out a business in Ireland though the presence and performance by an athlete/artist.
- In Sweden, the above mentioned special tax legislation is applicable to non-resident athletic/artistic companies. A company which receives compensation for an athlete's/artist's performance in Sweden is tax liable for the special tax, with a tax rate of 15 percent. A company which holds a permanent establishment in Sweden is taxed according to the general taxation system.
- In Turkey, non-resident legal entities are subject to 15 percent 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 percent.
- In the UK, withholding taxes on earnings may be deducted from compensation paid to the company for the athlete's/artist's services. A company is liable to pay UK corporation tax of 20 percent on its profits after payments of remuneration have been made to the athlete/artist for his/her employment related services. Dividends received by the athlete/artist are taxable as

investment income in the athlete's/artist's hands. If accumulated earnings are extracted on the winding-up of the company, they may be subject to capital gains tax rather than income tax.

- In the U.S, a company is taxed on income deriving from athletic/artistic performances is in the U.S. Moreover, if the receiving company compensates the athlete/artist for a performance which have occurred in the U.S., the individual will be taxed in the U.S. for income from personal services.

Most U.S. treaties provide that even a company which does not hold a permanent establishment in the U.S. may be subject to U.S. taxation.

## 2.1 Duration of Commitment

The duration of the athletic/artistic commitment generally increases the likelihood of creating a permanent establishment, which generally increase the taxation. Turkey and the U.S. however pay no regard to the length of the athlete's/artist's commitment in the state.

- In Brazil, the duration of the stay in Brazil contra abroad is relevant when determining if the athlete/artist is to be considered a Brazilian resident or not. The extent of the commitment thus triggers different tax consequences.
- In Denmark, a commitment which extends to a longer period of time may constitute a permanent establishment. As stated above, a company holding a permanent establishment is according to Danish law required to withhold tax when paying out salary to natural and legal person.
- In Ireland, there is an increased likelihood that a company owned by an athlete/artist or a company where the artist is employed is considered to be carrying on a trade in Ireland if the relevant athlete/artist stays and performs in Ireland for a long period of time. As stated above, a company which carries on a trade is liable to pay corporation tax.
- Correspondingly, there is a risk of creating a permanent establishment in Sweden if athletic/artistic performances extend over a long period of time. A company with a permanent establishment is in Sweden taxed according to the general taxation rules.
- In the UK, non-domiciled individuals can generally claim the remittance basis of taxation and do not have to pay UK tax on income and capital gains arising abroad. However, there is an annual charge of £30,000 for non-UK domiciled Performers who have been UK resident for 7 out of the last 9 tax years. This rises to £60,000 if the individual has been UK resident for 12 out of the 14 preceding tax years and £90,000 for 17 out of 20 years.

### 3. Covered Income

In general, the countries covered by the national reports have a broad perspective as regards income in connection to athletic/artistic performances. The taxation generally covers all compensation related to the athletic/artistic event regardless of the form of the compensation. Signing bonuses, incentive bonuses, endorsements and income from sale of merchandise are, with a few exceptions, taxable.

- In Brazil, taxation according to the standard taxation system applies to all kind of income.
- In Denmark, the income taxable in accordance with the special taxation for non-resident researchers and key employees includes the value of free car, free telephone and free internet connection. The taxation is not limited to income from the athletic/artistic performance.
- In Sweden, all forms of income deriving from the athletic/artistic performance is covered by the special income tax for non-resident athletes/artists/artist companies. Individual athletes'/artists' income from sale of merchandise is however not covered.

The special tax is moreover applicable to non-resident organizing companies. Such companies are taxed on income from ticket sales and advertising revenue, as well as income from merchandise such as income from sale of program sheets, stickers, etc.

- In Turkey, income such as reimbursement, indemnity, grant, raise, advance, monthly contribution, premiums, bonuses, etc. is classified as wages or salary, which is taxed as personal income. As mentioned above, Turkey provides a flat tax rate regarding to wages and salaries received by an athlete. Income from sponsorship or endorsement may however fall outside of the scope of wages and salary, and therefore be taxable at the general tax rate.

Prizes and bonuses provided as motivation is however excluded from the scope of personal income tax. The Income Tax law of Turkey states that "Prize and bonus payments made to amateur athletes who participate in sporting events" remain out of the scope of personal income tax. 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.

- UK tax law covers a whole range of income in relation to athletes/artists. Both income from the performance and any income that is related to a non-resident athlete's/artist's performance, such as such as endorsements, sale of merchandise and image rights is subject to UK income tax. The amount of the UK income tax depend on the precise wording of the contract and how much time they have spent performing and training in the UK. An athlete is taxed on a proportion of their worldwide sponsorship income based on the number of days they spend playing or training in the UK, as a proportion of their total playing and training days.

- In the U.S., non-resident athletes/artists are taxed for personal service income which may include prize money as well as appearance fees which are closely intertwined with and therefore largely indistinguishable from payment for individual athletic/artistic performances. Taxation of personal service income depends upon the location where the personal services are performed.

The U.S. further levies tax on endorsements and sale of merchandise to the extent attributable to the U.S. Taxation of royalties depends upon the place where the intangible property generating the royalty income is used.

#### 4. **Image rights**

Among the countries covered the national reports, income deriving from image rights generally constitutes royalty income, which is taxable. The treatment of royalty income of non-resident athletes/artists however differs between the countries.

- In Brazil, income deriving from image rights is considered taxable income, which is taxed according to the standard system.
- Payments of royalties from Danish sources to a non-resident recipient are liable to Danish withholding tax. 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. The double taxation treaty namely 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.

- Irish law does not recognize image rights unless the right in question is an identifiable intellectual property right, for example a registered trade mark or copyright.
- In Sweden, income from royalty or periodical fee for the use of tangible or intangible assets may under certain circumstances be taxed under the general legislation.
- In Turkey, income from sponsorship and endorsement which is independent from sports clubs is subject to the general taxation.
- In the UK, a non-resident athlete/artist is taxed only on UK-sourced income and the proportion of his/her worldwide endorsement income proportionate to the amount of days spent performing in the UK during the UK tax year. Many foreign athletes/artists coming to perform in the UK already have an established image rights company in an offshore location prior to becoming a UK resident. The UK tax authority is likely to insist that the employer or the



recipient of the services levies withholding tax on payments to a non-UK company.

- In the U.S., the taxation of income from image rights, i.e. royalty income, depends upon the place where the intangible property generating the royalty income is used. For a non-resident athlete/artist, the U.S. would impose a flat 30 percent withholding tax on the gross amount of the royalties attributable to the U.S.

## 5. Double taxation treaties

- A majority of the Brazilian double taxation treaties eliminate double taxation through deduction, while a minority allows credit. Where no double taxation treaty applies, Brazil apply the principle of reciprocity, meaning that Brazil allow for deduction/credit if the other country allows it.
- Danish double taxation treaties generally follow the OECD Model Tax Convention on Income and Capital, where double taxation generally is eliminated by the credit method.

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. 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.

- Irish double taxation treaties 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 does not arise in practice as regards individual athletes or artists.
- In Swedish double taxation treaties, double taxation is generally eliminated through the credit method. There is an apparent risk of double taxation in cases where no double taxation treaty applies.
- Turkish double taxation treaties generally provide for taxation by the state of performance, even when the income is received by another person than the athlete/artist.

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.

- The double taxation treaties which the UK has negotiated with foreign countries generally do not provide relief for non-resident athletes/ artists. The mechanism for elimination of double taxation depends on each treaty. Usually the position is that the UK provides a credit for foreign tax paid up to the amount of the tax payable in the UK.

If no double taxation treaty exists, unilateral relief may be available for foreign tax. This is usually available by claiming Foreign Tax Credit Relief. This relief is provided by way of a credit against UK income, corporation or capital gains tax for foreign tax suffered on the same income or gain and there are certain conditions that need to be satisfied. This is only available where relief is not available under a double taxation treaty.

- Most U.S. double taxation treaties provide that non-resident athletes/artists are not subject to U.S. income tax on income earned from athletic or artistic performances unless their gross receipts from such activities exceed a specified amount. The threshold amount is generally between USD 10,000 and USD 20,000.

U.S. law generally authorizes a foreign tax credit to reduce payments made to foreign jurisdictions. Most developed countries would provide a similar credit against their own income tax for taxes paid to the U.S.