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DOUBLE TAXATION SHOULD BE REMOVED

International performing artistes very often experience double taxation. Because of Article 17 (for artistes and sportsmen) in bilateral tax treaties, they are both taxed in the country of performance and the country of residence. At both ends, measures to eliminate this double taxation most often do not work:

1. Country of performance:
   a. deductibility of expenses is problematic
   b. income tax returns are in the language of the performance country
   c. tax treaty or national law exemptions are not easy to achieve
   d. high administrative expenses and time consuming procedures

2. Country of residence:
   a. problems with tax credits
   b. high administrative expenses and time-consuming procedures

The OECD has introduced Article 17 in its Model Tax Convention in 1963 as measure to counteract both tax avoidance behavior, mainly for very famous artistes and sportsmen pretending to live in tax havens, and non-compliance behavior, for those not declaring the foreign income in the residence country. But these arguments are not valid for Pearle* members and their artistes living in tax treaty countries:

- Tax avoidance and tax havens: artistes and groups from normal treaty countries do not avoid taxation. Therefore Article 17 is not needed in tax treaties, because the residence countries have normal tax systems.

- Non-compliance: performance income is nowadays almost only paid by bank transfers, and with tax and other accounting audits in the residence country, non-compliance has become a rare phenomenon.

Double taxation obstructs the mobility of performing artistes within the European Community and with third countries.

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In 2010 the OECD has published a Discussion Draft to update Article 17 Model Tax Convention, but did not recognize the problem of double taxation. Pearle* has responded on this Draft with the following recommendations:

1. **Primary solution**: remove Article 17 from bilateral treaties and the Model Tax Convention

In general, and as a basis, every country should have a national withholding tax for non-resident artistes (and sportsmen). But in tax treaties the normal tax rules for companies (Art. 7), self-employed (Art. 14) and employees (Art. 15) should apply. Therefore, Article 17 is not needed, because in bilateral treaty situations there is no tax avoidance behavior and non-compliance is not likely.

Best practice examples: the Netherlands and Denmark, (and for sports) Olympics (IOC), Champions League finals (UEFA), EURO 2012 (UEFA), World Cup Cricket 2011 and World Cup Rugby 2011.

2. **Alternative solutions**:
   a. Include Art. 17(3) for subsidized artistes and cultural exchange in the text of Article 17 OECD Model Tax Convention. This takes away double taxation for these categories.
   b. Insert a de-minimis rule of e.g. € 20.000 (or € 100.000) per artiste per year in Article 17 OECD Model Tax Convention (as the $20,000 in the US Model Tax Convention). This would limit source taxation to high earners.
   c. Exclude performing arts organisations working with employees from Article 17, when they meet the conditions of Art. 15(2) OECD Model.

Pearle* calls upon the OECD to recommend its Member States to add a protocol to their bilateral tax treaties for this change in Article 17. This protocol can become effective on short notice. Neither of the two countries would lose tax revenue, because to counter-balance the loss of source tax from non-residents, no tax credits would be given to resident artistes for their performance income from the other country.

The real profit from this change is elimination of double taxation, fewer administrative expenses, fair treatment as compared to local groups or artistes and more international mobility of performing artistes.

Annex:
Response of Pearle to draft commentary of OECD in 2010

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