

Legal News

April 2018

Taxation of Internationally Performing Athletes

Vassilios Koutsogiannakis, LL.M, Manager, Legal Services, vassilios.koutsogiannakis@ch.ey.com
Fabian Bigger, Consultant, Private Client Services, fabian.bigger@ch.ey.com

1. Introduction

International mobility has become a crucial tax issue, as tax rates substantially differ between different countries and more and more highly paid workers migrate to countries, where the tax burden on high-income individuals is lower. This is especially true for professional athletes.

Internationally, Article 17 of the OECD Model Convention (hereinafter «OECD MC») defines an athlete as a person, who participates in public competitions, even if only in a single one. Accordingly, people who participate in public competitions such as soccer, ice hockey, golf, tennis, beach volleyball and many more, have to be considered as athletes. In general, an athlete, who is resident or domiciled in Switzerland is subject to federal, cantonal and municipal taxes on his worldwide income, except income derived from real estate located abroad. However, if such athlete performs internationally, every country in which he performs, has potentially the right to impose income taxes. In order to determine which country has the right to tax the different forms of income and to avoid double taxation most Double Taxation Agreements (hereinafter «DTA») contain a regulation, which has been established in accordance with Article 17 and Article 23 A respectively B of the OECD MC.

Pursuant to Article 17(1) of the OECD MC athletes residing in a «contracting state may be taxed in the other contracting state in which their personal activities as such are performed». This so-

called athlete provision only applies to «income derived directly and indirectly from a specific performance by an athlete in the respective country». This formulation implies that apart from Switzerland as country of residence, the state, in which athletes perform their sporting activities, may impose taxation on the respective income as well. However, Article 23 A in connection with Article 17(1) of the OECD MC allows Switzerland to use the exemption method in its DTAs in order to eliminate the actual and the virtual double taxation. This means that Switzerland will exempt income subject to Article 17 of the OECD MC from income tax but will nevertheless take it into account to determine the overall applicable tax rate.

2. Income subject to Article 17 of the OECD MC

Income earned by athletes participating in sporting competitions is characterized as income from personal exertion. As discussed above, this means that according to Article 17 of the OECD MC this income will be taxed, where the athletes' services are performed whenever there is a close connection between the income and the performance of activities in a contracting state. As a consequence, it is extremely important to define, for which specific performance remunerations are paid.

For most (team) athletes the **fixed salary** is the main source of income. In general, according to Article 15 of the OECD MC a state is only allowed to tax income of a person employed by a foreign company once this employee has worked for more than

About the global EY organization

The global EY organization is a leader in assurance, tax, transaction and advisory services. We leverage our experience, knowledge and services to help build trust and confidence in the capital markets and in economies all over the world. We are ideally equipped for this task - with well trained employees, strong teams, excellent services and outstanding client relations. Our global purpose is to drive progress and make a difference by building a better working world - for our people, for our clients and for our communities.

The global EY organization refers to all member firms of Ernst & Young Global Limited (EYG). Each EYG member firm is a separate legal entity and has no liability for another such entity's acts or omissions. Ernst & Young Global Limited, a UK company limited by guarantee, does not provide services to clients. For more information, please visit www.ey.com.

EY's organization is represented in Switzerland by Ernst & Young Ltd, Basel, with 10 offices across Switzerland, and in Liechtenstein by Ernst & Young AG, Vaduz. In this publication, "EY" and "we" refer to Ernst & Young Ltd, Basel, a member firm of Ernst & Young Global Limited.

Legal News: Publication in German, French and English

Registration/address changes
www.ey.com/ch/newsletter

www.ey.com/ch/legal

© 2018
Ernst & Young Ltd
All Rights Reserved.
ED None

This publication contains information in summary form and is therefore intended for general guidance only. Although prepared with utmost care this publication is not intended to be a substitute for detailed research or professional advice. Therefore, by reading this publication, you agree that no liability for correctness, completeness and/or currentness will be assumed. It is solely the responsibility of the readers to decide whether and in what form the information made available is relevant for their purposes. Neither Ernst & Young Ltd nor any other member of the global EY organization accepts any responsibility. On any specific matter, reference should be made to the appropriate advisor.

www.ey.com/ch

183 days in this state (assumed there is no permanent establishment of the respective company in this state). But as Article 17 of the OECD MC explicitly states that it has priority over Article 15 of the OECD MC, the tax liability for an athlete starts already from day one. Hence, a foreign state will levy income taxes on an athlete's fixed salary in proportion to the total «*performing days*» per year.

Prize money paid by event organizers is directly related to the sporting activity and can therefore be assigned to Article 17 of the OECD MC. The same also applies to **ranking bonuses** paid for a stipulated achievement in a competition. As all those payments have to be assigned to the jurisdiction of the respective host state, they are not subject to Swiss taxation. This holds true, even if the respective host state (also a contracting state) does not levy withholding tax.

Event organizers often pay so-called **appearance fees** to athletes in order to induce them to appear in a certain competition. Most authors argue correctly that the real source of the fee is not the service to be performed but the athlete's reputation as a professional sports-person. Accordingly, appearance fees are not subject to Article 17 of the OECD MC and can be taxed by the Swiss tax authorities.

The same argumentation also applies to **fixed basic compensations** paid by outfitters and sponsors, as long as these compensations do not either depend on a specific sporting performance of the athletes or are paid in relation to any competition. Thus, it can be argued that income from a fixed basic compensation paid by outfitters and sponsors is not subject to Article 17 of the OECD MC and, hence, will be fully taxed in Switzerland. Nevertheless, while this is true for most cases, there are some countries (e.g. Great Britain) that do levy income tax for such income following the argumentation that the sponsors pay the athletes a fixed basic compensation for all their performances combined and, hence, treat it similar to the fixed salary explained above.

Ranking **bonuses for top classifications** in overall ratings or world rankings cannot be assigned to a specific sporting performance or to a certain individual venue. Pursuantly, the athlete provision of Article 17 of the OECD MC cannot be applied to such form of income.

Income derived from the use of the athletes' **intellectual property rights** is usually not directly related to a specific sporting performance and is normally covered by Article 12 of the OECD MC. According to this article such income will not be taxed at source and will therefore be subject to taxation in Switzerland. However, the commentary to the OECD MC specifically names cases in regard to an athlete's name, signature or personal image, where the payment from an event organizer, outfitter or sponsor to such athlete for the use of, or the right to use its intellectual property rights constitutes remuneration for the athlete's activities. Therefore, in such cases, Article 17 OECD MC applies, income is taxed at source and not subject to Swiss income tax.

3. Summary

In summary, Switzerland is allowed to levy tax on the fixed salary (excluding the days performed abroad), ranking bonuses for overall ratings or world rankings, appearance fees as well as fixed basic compensations for the athletes' intellectual property rights, which are not directly or indirectly connected to an event or a competition. Additionally, the Swiss tax authorities may also tax price money as well as bonuses paid for an achievement in a competition taking place in Switzerland. On the other hand, the tax authorities of the contractual states, in which the sporting activities outside of Switzerland take place, have the right to tax the price money as well as ranking bonuses and every other compensation that is directly connected with the competition taking place in their jurisdiction.

Finally, due to the complex tax situation, it is advisable to contact a specialist to avoid possible double taxation and a potential penalty for unpaid taxes.

Contacts Legal

Basel: Maja Krapf
maja.krapf@ch.ey.com

Bern: Jürg Strebel
juerg.strebel@ch.ey.com

Geneva: Aurélien Muller
aurelien.muller@ch.ey.com

Zurich: Oliver Blum
Oliver.Blum@ch.ey.com