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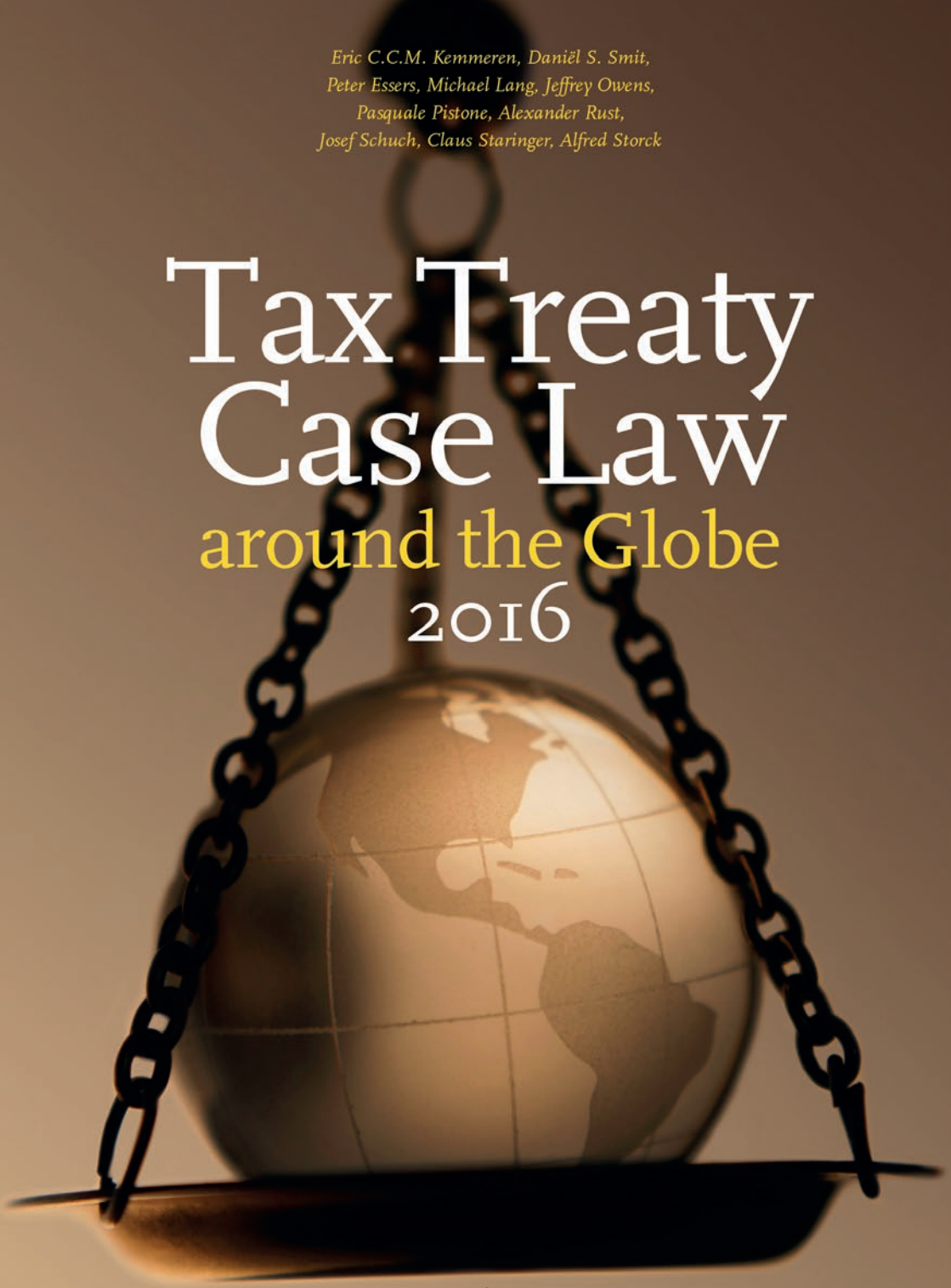
Tax Treaty Case Law around the Globe 2016



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Tax Treaty Case Law around the Globe 2016

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This book provides a unique and comprehensive global overview of international tax disputes on double tax conventions, thereby filling a gap in the area of tax treaty case law. It covers the 37 most important tax treaty cases that were decided in 2015 around the world. The systematic structure of each case allows easy and efficient comparison of the varying application and interpretation of tax treaties in different regimes.

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Belgium: Article 17 OECD Model Still Entertaining Belgian Courts[1]

Luc De Broe

22.1. Introduction

In 1963, article 17 of the OECD Model Convention (OECD Model), governing the tax regime of internationally performing artistes and athletes,[2] was introduced as an exception to the standard rules of articles 7 and 15 of the OECD Model to "avoid practical difficulties" which often arise in taxing these persons when they perform abroad.[3] Since its enactment, however, article 17 of the OECD Model has been the subject of a great amount of case law and has caused considerable controversy in legal doctrine.[4] Recent decisions of the Supreme Court confirm that this was no different in 2015.

22.2. Supreme Court 9 January 2015[5]

22.2.1. Facts of the case

A Belgian non-profit organization ("NPO") was involved in the organization of concerts of non-resident entertainers. The fees for the performances were not paid directly to the international entertainers, but to a company resident in Ireland.[6]

1. BE: Supreme Court (*Cour de cassation/Hof van Cassatie*) (SC), 9 Jan. 2015, *VZW Altsien*, no. F.12.0112.N, and BE: SC, 21 May 2015, *S.A.D.S.*, no. F.140143.F.
2. Changed in 2014 to "entertainers and sportspersons".
3. *OECD Model Tax Convention on Income and on Capital: Commentary on Article 17* (1963) para. 2.
4. Inter alia, A. Cordewener, *Article 17. Entertainers and Sportspersons*, in *Klaus Vogel on Double Taxation Conventions*, 4th edn, vol. II, p. 1298 et seq. (E. Reimer & A. Rust eds., Kluwer Law International 2015).
5. On the same date, a similar decision was taken in relation to article 17 of the (1970) DTC concluded between Belgium and the Netherlands.
6. Based on the facts mentioned in the court decisions, it is not clear whether the entertainers were residents of Ireland or if they were shareholders or employees of the Irish company.

In accordance with Belgian domestic law, which provides for a withholding obligation irrespective of whether the income is paid to the entertainer or another person, the NPO withheld source tax at a rate of 18% on the amounts paid. However, as the NPO was of the opinion that Belgium was not granted the right to levy source taxation under the relevant provisions of the double tax treaty with Ireland, it submitted a request for refund of the tax paid. This request was rejected by the Belgian tax authorities.

The NPO appealed to the court of first instance of Leuven, arguing that the double tax treaty of 1970 concluded between Belgium and Ireland, based on the OECD Model (1963), did not allow Belgium to tax the income as it did not include a provision similar to article 17(2) of the OECD Model (1977). Consequently, fees not paid to the performer directly but to a non-resident company were not covered by article 17 of the Belgium-Ireland tax treaty. Instead, the NPO held, article 7 of the treaty was applicable, under which provision the income was not taxable in Belgium since the non-resident company did not have a PE in Belgium.

The Belgian tax authorities took the position that article 17 of the treaty allowed Belgium to tax all income from the entertainers' personal activities exercised in Belgium, regardless whether the income was paid to the entertainers or to another person. They relied on paragraph 8 of the Commentary on Article 17 of the OECD Model (1992).[7] According to the tax authorities, a look-through provision as mentioned in the Commentary is included in article 228(2)(8°) of the Belgian Income Tax Code ("ITC"), stating that "income received by non-resident entertainers and sportspersons as a consideration for sport and artistic performances in Belgium is subject to Belgian wage tax, even if the income is not directly paid to the entertainer or sportsperson but to another individual or legal entity." As a consequence, the tax authorities argued that income paid to the Irish company was taxable in Belgium to withholding tax at a fixed rate of 18%.

7. Providing that article 17(1) "applies to income derived directly and indirectly from a performance by an individual entertainer or sportsperson … In addition, where its domestic laws 'look through' such entities and treat the income as accruing directly to the individual, paragraph 1 enables that State to tax income derived from performances in its territory and accruing in the entity for the individual's benefit, even if the income is not actually paid as remuneration to the individual"; *see* para. 8, fifth sentence, *OECD Model: Commentary on Article 17(1)* (1992).

22.2.2. The courts' decisions

22.2.2.1. Appreciation by the court of first instance and the Court of Appeal

The court of first instance held that article 17 of the Belgium-Ireland DTC is identical to the text of article 17(1) of the OECO Model (1992) and consequently these provisions must be given the same interpretation.

It found that article 17 of the Belgium-Ireland DTC applies to income that is derived either directly or indirectly by the entertainer from his personal activities. Regarding the question whether Belgian domestic law contains a "look-through" provision,[8] the court of first instance, contrary to the tax authorities' position, found that article 228(2)(8°) of the Belgian ITC did not allow disregarding the legal entity receiving the income. In particular, it held that the "look-through" aspect of article 228(2)(8°) is negated by the fact that this provision also applies in case the income is not paid to a legal entity, but to an individual different from the performer. The court held that "this evidences that this provision does not allow to *disregard* the entity receiving the income" and considered article 228(2)(8°) of the Belgian ITC equivalent to article 17(2) of the OECD Model (1977).

Since in the present case the income was paid to a company and a "look-through" provision was not available, article 7 of the Belgium-Ireland DTC was to be applied. However, the court of first instance concluded that as the Irish company did not have a permanent establishment (PE) in Belgium, the fees it received were not taxable in Belgium.

The Court of Appeal, adhering to the reasoning of the court of first instance, confirmed its decision that the income was not taxable in Belgium.[9]

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8. Thereby applying paragraph 8 of the Commentary on Article 17(1).

9. On the grounds that (i) income paid to an Irish company in respect of personal activities exercised by an entertainer in Belgium is not covered by the text of article 17 of the DTC; (ii) article 228(2)(8°) of the Belgian ITC does not qualify as a "look-through" rule since it explicitly recognizes the existence of the non-resident entity (or individual) receiving the income instead of disregarding it, and that therefore this provision corresponds to article 17(2) of the 1977 OECD Model and (iii) the income was governed by article 7 of the Belgium-Ireland treaty, which was not applicable due to lack of a Belgian PE of the Irish company.

22.2.2.2. Decision of the Supreme Court

In a brief judgment, the Supreme Court found that Belgian domestic law (inter alia, the aforementioned "look-through" provision) allows the taxation of income derived from sport and artistic performances carried out by non-residents without the intervention of a PE, even in case the income is not paid to the entertainer or sportsperson but to a non-resident company.

However, the Supreme Court emphasized that double tax treaties have priority over Belgian domestic law. Consequently, if there is a treaty between Belgium and the state of residence of the company, the domestic provision in itself cannot confer tax jurisdiction on Belgium, but must be applied together with the provisions of the double tax treaty. Article 7 of the treaty prevents Belgium from levying tax on an Irish company with no PE in Belgium. Article 17 of the DTC, on the other hand, does not permit taxation in Belgium of fees paid to an Irish company for the performance of an artiste.

22.2.3. Comments on the Court's reasoning

22.2.3.1. Taxing rights of Belgium under the Belgium-Ireland DTC

Based on the OECD Model (1977), states in which a non-resident entertainer exercises his (artistic) activities through an interposed company are granted the right to tax the income from those activities provided that they have concluded a DTC with the entertainer's residence state that includes a provision similar to article 17(2). As from 1992, the Commentary on the OECD Model provides that performance states (alternatively) have tax jurisdiction in such a case if their domestic law includes a so-called "look-through" provision that allows them to disregard the person receiving the income and to tax it as the entertainer's income.

Article 17 of the 1970 DTC concluded between Belgium and Ireland is identical to article 17 of the OECD Model (1963), which did not include a second paragraph that would entitle Belgium to tax the income paid to "another person". Consequently, the case at hand concerns two key questions:

(1) Whether Belgian domestic law provides for a measure that allows the Belgian tax authorities to disregard the interposed company to tax the individual entertainer on his performance-related income (i.e. a so-called "look-through" rule).

(2) Provided that such a rule is available, whether Belgium is allowed to apply the 1992 Commentary to Article 17 on an ambulatory basis to tax income based on the 1970 DTC with Ireland.

22.2.3.2. Opinion of AG Thijs

As regards the question whether Belgian income tax law provides for a look-through provision, Advocate-General Thijs considers that the Belgian withholding tax is due by the person paying the performance-related income mentioned in article 228(2)(8°) of the ITC to the entertainer, thereby acting as a debtor, depository or intermediary. In the absence of such a person, this obligation lies on the organizer of the event. AG Thijs disagrees with the Court of Appeal. In his view, article 228(2)(8°) of the ITC makes abstraction of the third party to which the income accrues since under this provision, the actual taxpayer is not the non-resident company but the entertainer who received the income as a consideration for his performance.

As regards the second question, AG Thijs examines whether the application of such a domestic "look-through" provision would be prevented by the Belgium-Ireland DTC. The AG finds that article 17 of the Belgium-Ireland DTC is equivalent to article 17(1) of the OECD Model (1992) and therefore the Commentary to the OECD Model (1992) also applies in case the income is derived by the entertainer directly as well as indirectly through another person. The AG refers to paragraph 8 of the Commentary to the OECD Model (1992) and finds that it also applies to the OECD Model (1963), even more so because article 17(1) remained unchanged.

Furthermore, AG Thijs invokes the concept of the ambulatory interpretation of the OECD Model contained in paragraph 35 of its Commentary,[10] to conclude that the Commentary to the OECD Model (1992) is applicable to the DTC agreed between Belgium and Ireland.

Based on this reasoning, article 17 of the Belgium-Ireland DTC allows Belgium to tax the income derived by the entertainer, as provided for under

10. Which the OECD member countries themselves subscribed to in accordance with the principles contained in the Vienna Convention on the Law of Treaties of 23 May 1969 and providing that "changes or additions to the Commentaries are normally applicable to the interpretation and application of conventions concluded before their adoption, because they reflect the consensus of the OECD Member countries as to the proper interpretation of existing provisions and their application to specific situations."

article 228(2)(8°) of the Belgian ITC, regardless of whether that income was paid to him directly by the organizer or indirectly via a non-resident company.

22.2.3.3. Article 228(2)(8°) Belgian ITC

The Belgian tax authorities have consistently taken the position that article 228(2)(8°) of the ITC allows them to disregard non-resident companies and tax the individual entertainer on the income/remuneration he receives from such companies for activities performed as an entertainer. In this regard, the Notice of 25 April 1997 issued by the Belgian Ministry of Finance[11] on the application of article 228(2)(8°) of the ITC explicitly provides for the obligation, in principle, of the Belgian organizer to withhold 18% Belgian wage tax on the full performance-related income paid to the non-resident company. However, an exemption applies to the amounts that are attributable to the company as its "own income" (i.e. income received by the company for its own benefit).[12,13]

The Belgian tax authorities are thus of the opinion that article 228(2)(8°) of the ITC qualifies as a "look-through" rule since it allows the taxation of income derived from sport and artistic performances carried out by non-resident sportspersons or entertainers in the absence of a PE, even if this income is not paid to the entertainer or sportsperson but to a non-resident

11. Updated and confirmed by Circular Letter Ci.RH.244/536.588 of 16 October 2001, as well as the responses of the Federal Minister of Finance to the following parliamentary questions: question no. 986 of Representative Daems of 18 July 1997, *Vr. en Antw. Kamer*, no. 100, 1996-1997 and question no. 283 of Senator Hatry of 18 July 1997, *Vr. en Antw. Senaat*, no. 1-57, 1997-1998.

12. Provided that (i) the company did not arrange the performance through a Belgian PE and (ii) article 17 of the applicable DTC does not include a provision similar to article 17(2) of the OECD Model. The company's "own income" is thereby defined as the difference between the total fee received from the Belgian organizer and the amount which the company will have to pay on to the entertainer from whose personal activities the income was derived.

13. The Notice furthermore states that "it is self-evident that, notwithstanding this exemption for the company's 'own income', the Belgian organizer is still required to withhold the wage tax on the 'part of the income intended to be paid onto the entertainers or sportspersons'." Should the company fail to provide the Belgian organizer with the necessary evidence of entitlement to the exemption at source, however, then the latter is "strongly recommended" to withhold the tax on the full amount paid, for which the company could request a refund afterwards. After all, the obligation to withhold the wage tax lies with the Belgian organizer who is liable in case insufficient tax has been withheld.

company. This position, however, has been heavily criticized by legal scholars[14] and was accepted in jurisprudence only once.[15,16]

In its decision of 9 January 2015, the Supreme Court held that Belgium is not allowed to tax income paid by a Belgian organizer to non-resident companies in consideration for performances of entertainers or sportspersons based solely on its domestic law (i.e. article 228(2)(8°) of the ITC). This decision, however, leaves the question whether Belgian domestic law includes a look-through provision unanswered. It also remains silent on the issue whether article 17 of the Belgian-Ireland DTC is to be interpreted on an ambulatory basis. As the Supreme Court provides no clarity on these key questions whatsoever, it is submitted that this decision can be based on either one of the two premises discussed hereafter.

22.2.3.3.1. *Article 228(2)(8°) ITC does not qualify as a "look-through" rule*

The Supreme Court's rejection of Belgian tax jurisdiction might hinge on the denial of the qualification as a "look-through" provision of article 228(2)(8°) of the ITC.

Under the assumption that Belgian domestic law does not include a "look-through" rule, Belgium cannot tax an individual entertainer's performance income on the basis of article 17 of the Belgium-Ireland DTC if the income accrues to an Irish company. As explained above,[17] Belgium's taxing right would require either (i) the inclusion in the treaty of a provision similar to article 17(2) of the OECD Model (1997) or (ii) a domestic rule which allows the tax authorities to disregard the person receiving the income and to tax it as the entertainer's income. In the absence of a second paragraph to Article 17 of the DTC, a domestic "look-through" provision becomes a *conditio sine qua non* for the application of article 17 of the Belgium-Ireland DTC. Hence, if article 228(2)(8°) of the ITC is not considered to be such a rule, then article 7 of the DTC is applicable, based on which Belgium is not granted the right to tax the company's income as the Irish company does not have a PE located in Belgium.

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14. Inter alia, P. Hinnekens, Fisk. Int. 162, p. 6 et seq. (1997); A. Nijs, Fisk. Int. 168, p. 1 et seq. (1997); D. Deschrijver, Intertax 26, p. 145 et seq. (1998); W. Coppens & J. Reniers, AFT 50, p. 522 et seq. (2000); W. Claes & P. Hinnekens, Fisc. Int. 263, p. 5 et seq. (2005).
15. BE: Ghent, 13 June 2006, 2002/AR/1211.
16. *See* Cordewener, *supra* n. 4, at p. 1344, n. 199.
17. *See* section 22.2.3.1.

22.2.3.3.2. *Article 228(2)(8°) ITC qualifies as a "look-through" rule*

The Supreme Court decision of 9 January 2015 does not explicitly deny the qualification of article 228(2)(8°) of the ITC as a provision allowing the tax authorities to disregard the interposed company in order to tax the individual entertainer's performance income. It is thus possible that the Supreme Court considers article 228(2)(8°) a "look-through" provision while at the same time rejecting its application. If this is a correct interpretation of the Supreme Court's decision, it can be said that the Court has implicitly refused the ambulatory interpretation of paragraph 8 of the Commentary on Article 17 of the OECD Model (1992).

This hypothesis equally leads to the non-applicability of article 17 of the Belgium-Ireland DTC and results in the denial of taxing rights of Belgium in the absence of a PE of the Irish company.

22.2.3.3.3. *Ambulatory interpretation of paragraph 8 of the 1992 Commentary on Article 17 OECD Model?*

As stated above, the Supreme Court remains silent on the question whether Belgium is allowed to apply the 1992 Commentary to Article 17 to tax income based on the 1970 DTC with Ireland.

It has been argued in legal doctrine that interpreting the OECD Commentary on an ambulatory basis is appropriate as long as changes thereto serve as mere clarifications or elaborations of existing treaty provisions. Conversely, such an interpretation should not be allowed when revisions of the Commentary are in fact amendments of the treaty.[18]

As mentioned above,[19] the first version of article 17 of the OECD Model (1963) contained only one paragraph, which was equivalent in substance to article 17(1) of (subsequent) versions of the OECD Model. The Commentary on Article 17 of the OECD Model (1963) provided that "Article 17 relate[s] to public entertainers and athletes and stipulate[s] that they may be taxed in the State in which the activities are performed, whether these are of an independent or of a dependent nature…."[20] Based on an

18. D. Ward, J. Avery Jones & L. De Broe, *The Interpretation of Income Tax Treaties with Particular Reference to the Commentaries on the OECD Model* (IBFD 2005); H.J. Ault, Intertax 4, p. 148 (1994); S. Van Crombrugge, Fisc. Int. 274, p. 5 (2006).
19. *See* section 22.2.3.1.
20. *See* para. 1 *OECD Model: Commentary on Article 17* (1963).

analysis of the drafting history of article 17 of the OECD Model and the Commentary thereon, it can be argued that it is appropriate to consider paragraph 8 of the 1992 version of the Commentary to the Belgian-Ireland DTC concluded in 1970 on an ambulatory basis.[21] Arguably, however, there are arguments in support of the contrary as well.[22]

In its decision of 9 January 2015, the Supreme Court does not reveal its position on the ambulatory interpretation of the 1992 Commentary on Article 17 (1) of the 1977 (and subsequent) versions of the OECD Model. However, should the Supreme Court consider article 228(2)(8°) of the Belgian ITC a "look-through" rule, then this would imply an implicit rejection of the application of paragraph 8 of the Commentary on Article 17 of treaties concluded prior to 1992 (*see* section 22.2.3.3.2.).

21. The 1963 version of the Commentary indicates that for the application of article 17, it is not required that the income accrues to the entertainer directly. On the contrary, it can be inferred from the expression "stipulate[s] that they may be taxed in the State in which the activities are performed" that the tax should be borne by the entertainer. This is the case when the tax burden weighs on the entertainer's income, either directly or indirectly. Conversely, article 17 of the OECD Model (1963) cannot be applied to tax income that is not paid for the benefit of the entertainer (such as income derived from the artistic performance by another person for his own benefit). Assuming that article 17(1) of the OECD Model envisaged the taxation of the person who actually exercised the activity, regardless of whether that person received the income directly or indirectly, as long as the income is taxable under the source state's domestic "look-through" rule, then paragraph 8 of the 1992 Commentary on Article 17 does not widen the scope of article 17(1) but merely explains its application and the limits thereto.

22. Article 17 of the OECD Model (1963) was extended with an extra measure (paragraph 2) in 1977 to combat tax avoidance since many countries could not tax the income of interposed companies based on the text of article 17(1) of the OECD Model, resulting in a loss of taxing rights. It can be argued that this extension was inserted into the OECD Model with the intention to enlarge the scope of the 1963 version of article 17 considerably. Yet, this anti-avoidance measure only resolved the issue in cases where the double tax treaties contained a provision similar to article 17(2). Therefore, the 1992 version of the Commentary was revised to grant taxing rights to source states on income derived from sport and artistic performances paid to companies, provided that their domestic law allowed them to "look through" such entities. Against this background, the 1992 Update of the Commentary does not seem to merely "clarify" or "formulate more precisely" article 17(1) of the OECD Model and one might question the validity of an interpretation of article 17 of the 1970 Belgium-Ireland DTC on an ambulatory basis.

22.3. Supreme Court 21 May 2015

22.3.1. Facts of the case

During the tax years 1996 and 1997, a Canadian-resident individual performed as a singer at a concert in Belgium. The fees for the performance were not paid to the singer directly but to a French company, in which neither the singer nor any person associated with her held a participation. The French company subsequently paid a fee as a consideration for the singer's performance to a Canadian company owned by the singer.[23]

As the Belgian concert organizer was not able to determine the "own income" of the French company derived from the artistic performance, it withheld source taxation amounting to 18% on the full amount of the fees paid as a consideration for the artistic performance as if they were entirely derived by the entertainer from her personal activities.[24]

The Canadian company requested a refund of this wage tax, arguing that the DTC concluded between Belgium and Canada applicable at the time[25] did not allow Belgium to tax the income, based on the last paragraph of article 17. In particular, article 17 of the 1975 Belgium-Canada double tax treaty stated the following:

> 1. Notwithstanding the provisions of Articles VII, XIV and XV income derived by entertainers, such as theatre, motion picture, radio or television artistes, and musicians, and by athletes, from their personal activities as such may be taxed in the Contracting State in which these activities are exercised.
>
> 2. Where income in respect of personal activities as such of an entertainer or athlete accrues not to that entertainer or athlete himself but to another person that income may, notwithstanding the provisions of Articles VII, XIV and XV, be taxed in the Contracting State in which the activities of the entertainer or athlete are exercised.
>
> 3. The provisions of paragraph 2 shall not apply if the entertainer or the athlete establishes that neither he nor any person associated with him participate directly or indirectly in the profits of the person referred to in that paragraph.

23. Although not explicitly mentioned, it is assumed that the entertainer was not employed by the French company.
24. This approach is in line with the recommendation of the Belgian Ministry of Finance's Notice of 25 April 1997, according to which the French company in the case at hand would qualify for a refund of wage tax that was (unduly) withheld by the Belgian organizer; *see* section 22.2.3.3.
25. *Convention between Canada and Belgium for the avoidance of double taxation and the settlement of other matters with respect to taxes on income of 29 May 1975.*

According to the Belgian tax authorities, the income paid to the French company was taxable in Belgium under article 17(1) of the 1975 DTC concluded with Canada in so far as it concerned income earned from the singer's personal activities in Belgium.[26]

The entertainer took the position that the 1975 Belgium-Canada DTC did not allow taxation of the income by Belgium, arguing that as the income accrued to the French company, it could only be taxed by Belgium on the basis of article 17(2). However, this article did not apply because the conditions of article 17(3) were fulfilled, which provided for an exception to paragraph 2. Thus, as the singer had demonstrated that she nor any person associated with her participated directly or indirectly in the profits of the French company, the fee for the performance could not be taxed by Belgium under article 17 of the 1975 Belgium-Canada DTC.

22.3.2. The courts' decisions

22.3.2.1. Appreciation by the court of first instance and the Court of Appeal

On 18 April 2002, the court of first instance confirmed the Belgian tax authorities' administrative decision. Ten years later (19 December 2012), the Court of Appeal, however, held that the entertainer had never been a shareholder or manager of the French company and the fee for the artistic performance was governed by an agreement between the French production company and the Canadian company owned by the performer. Consequently, article 17(3) of the 1975 Belgium-Canada DTC applied to the income paid to the French company and precluded the application of article 17(2). The Court of Appeal concluded that as the income accrued to the French company and the entertainer had provided evidence that article 17(3) of the 1975 Belgium-Canada DTC was applicable, Belgium was not entitled to tax the fee at source under article 17(2) of the treaty, even though the fee also included the entertainer's own income.

26. In particular, the administrative decision rejecting the entertainer's request for a refund of the tax paid stated that "the exemption of the wage tax could be granted as regards the fees paid by the Belgian concert organizer to the French company to the extent that it concerned the French company's own profits."

22.3.2.2. Decision of the Supreme Court

The Supreme Court considered that Article 17(1) of the Belgium-Canada DTC sets out the rule governing "income derived by entertainers … from their personal activities as such", which "may be taxed in the Contracting State in which these activities are exercised", whereas article 17(2) and (3) provides for (i) an extension (paragraph 2) of the rule included in the first paragraph with regard to income derived from such activities that "accrues to a person different from the entertainer … himself" and (ii) an exception (paragraph 3) to that extension "if the entertainer … establishes [that he does not participate] directly or indirectly in the profits of the person referred to in [the second] paragraph."

According to the Supreme Court, it follows from those provisions that if the entertainer establishes, in accordance with article 17(3), that the income accruing to another person is not taxable under article 17(2), the income that is paid for the entertainer's own benefit is nonetheless taxable in the contracting state in which the artistic performance was exercised on the basis of article 17(1). Hence, taxation of an entertainer's performance income that he received for his own benefit on the basis of article 17(1) is not prevented by the application of article 17(3) of the 1975 Belgium-Canada DTC.

22.3.3. Comments on the Court's reasoning

22.3.3.1. Article 17(3) of the 1975 Belgium-Canada DTC

As mentioned above,[27] article 17(2) of the OECD Model was added in 1977 as a measure against tax avoidance through the use of star companies. Under this provision, source countries that did not provide for a "look-through" rule were granted the right to tax income from artistic performances where this income does not accrue to the entertainer himself but to another person. It was explained in the 1977 Commentary that the purpose of paragraph 2 was to counter the use of star company tax avoidance schemes by self-employed top artistes and sportsmen.[28]

27. *See* section 22.2.3.1.

28. *See* para. 4 *OECD Model: Commentary on Article 17* (1977): "The purpose of paragraph 2 is to counteract tax avoidance devises in cases where remuneration for the performance of an entertainer or athlete is not paid to the entertainer or athlete himself but to another person, e.g. a so-called artiste-company,… Paragraph 2 permits the State in which the performance is given to impose a tax on the profits diverted from the

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