CAPITALCONSULTING

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Taxing Issues

Taxation of Artistes and Sportsmen

With the Olympics and European Football championships happening this summer there are many people out there who probably wonder how the world of taxation deals with sportsmen and women. This equally applies to an "artiste" who is defined by the OECD tax model convention as those individuals who make a performance in public such as theatre, motion picture, radio or television artiste or a musician.

With so many different venues for sporting events around the globe and travel becoming cheaper with low cost airlines there has been a significant rise in sporting events for both individuals and teams. There are many newspaper articles alleging that a certain golfer or tennis player has relocated to a tax haven such as Monaco to avoid taxes. Does this really work, do they pay no taxes and how is the normal sportsman or woman taxed?

The main issue is that sportsmen and women in many cases perform in many different countries and using the source principle (the country where the income is generated) each country where they perform is entitled to tax the income generated by that performance. Using the example of Wimbledon, the UK fiscal authorities (HMRC) have the rights under UK domestic tax law to tax the entire prize money winnings of all players who compete in the championships.

One might expect that the prize winnings should be taxed in the country of residence of each player however according to the OECD tax model convention (Article 17) it is noted that it can be taxed in the country of source.

The main reason for this is that it is simpler from an administrative point of view to collect at source and more importantly it reduces the risk of sportsmen or women evading tax altogether as they are not sure that these winnings will be reported in their tax return in their resident country.

Most countries levy a source tax on the prize winnings earned by these sports people. The rates usually vary between 15 – 30%.

So going back to our resident in Monaco, what happens, can he claim back this tax as he is resident in a zero tax jurisdiction? Unfortunately no, the tax becomes a final tax and stays with the UK authorities.

What happens if the sportsman is resident in a normal tax jurisdiction like Germany for example? In this case one should examine the double tax bilateral agreement that exists between Germany and the UK to first of all establish each country's taxing rights. Under this agreement, which follows the OECD tax model convention, the UK has the right to tax the winnings at source in accordance with article 17. Germany as the resident country also has the right to tax the income due to the residency status of the sportsman but under article 23 they will grant a tax credit for the amount of tax suffered at source in the UK.

This appears to be quite balanced as the individual gets a tax credit for the tax suffered in the source country however this is not necessarily the reality. The country of performance may levy the tax on a different figure. In Spain for example they levy the tax on the gross performance fee (before any expenses are taken into account). For example, a German orchestra performs in Spain for a performance fee of EUR 25'000. They have touring expenses of EUR 15'000. Spain taxes 25% on the full fee of EUR 25'000, giving EUR 6'250 in Spanish tax. Germany, the resident country, taxes after expenses (EUR 25'000 less EUR 15'000) at 35%, giving EUR 3'500. Germany will allow a maximum EUR 3'500 tax credit from Spain (no more than the amount due under German tax laws). This means there is international double taxation of EUR 2'750 (EUR 6'250 less EUR 3'500)!

So it can be seen that sportsmen or women are usually taxed on their winnings in the source country of performance, so why move to a tax haven? The main reason for this is that endorsements/sponsorship deals, often lucrative, are treated differently. Unless they can be clearly attributed to a particular performance then they are usually taxed only in the resident country. Careful planning needs to be made by these individuals as not only is it difficult to win prize money but it is also a very complex area to operate in from a tax point of view.

Welcome

Welcome to the quarterly bulletin from Capital Consulting.

In this second issue of 2016 we provide an interesting article about the complex taxing of Artistes and Sportsmen.

We also provide you with a brief update on the pension changes adopted by Germany in accordance with the EU Directive and an article concerning non-disclosure of information from Switzerland following a request from the Netherlands.

Our country profiles of this issue cover Mexico and the Netherlands, providing you with a useful summary of living, taxation and social security information for each country.

Finally, we look at the UK Budget news concerning the attack on tax avoiding special loan remuneration schemes.

I hope you will find this new edition useful and would welcome your feedback at news@capitaltaxconsulting.com.

We take this opportunity to wish you all a healthy and prosperous New Year.

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Germany adopts EU pension provisions

In December 2015, the German parliament approved a law that adopted the pension provisions of the EU Mobility Directive, it should be noted that there still remain a few other EU member countries who have still not adopted this policy. The Directive was passed to improve worker mobility between EU countries by requiring stronger pension protections. The new German law adopts two major provisions for employers:

1. Pensions will now fully vest in three years instead of five years, and employees can participate in the plan starting at 21 years old instead of 25.

2. The value of a vested pension for former employees (inactive plan members) must now be adjusted to remain commensurate with the vested rights of active members.

These new requirements make it easier for employees to transfer jobs and move between EU countries by protecting pensions after moving to a job in Germany. However, the law now provides fully vested pensions to employees as young as age 24, and the required adjustments to final-pay pension plans may significantly increase an employer's pension cost. The law will be implemented from 1 January 2018.

Country Profile:

The Netherlands

Capital:	Amsterdam
Population:	16'900'000 (July 2015 est.)
Language:	Dutch, Frisian
Exchange rate:	GBP 1 = EUR 1.27 – Euro (30 March 2016)
Time zone:	GMT+1 (+2 in summer)
Electricity:	230V/50Hz
Cost of Living:	Amsterdam ranked 69th most expensive city in the world - Mercer Worldwide Survey 2015
Tax year:	1 January to 31 December

Income Tax

Residents are liable for income tax in the Netherlands on their worldwide income; non-residents are liable on their Dutch-source income only. Residence is not determined by tax law, but according to the circumstances. The following circumstances are considered important: the availability of a permanent home, the place where the spouse and the children live and the centre of personal and economic relations. Income tax is levied on three categories (boxes) of income: Box 1 includes employment income, business profits and income from home ownership, Box 2 includes income from a substantial shareholding, and Box 3 includes income from savings and investments. Taxpayers may deduct the following from Box 1 income: mortgage interest for primary residence, premiums for certain life insurances, alimony payments, extraordinary medical expenses, support for direct relatives and gifts if certain thresholds are exceeded and a moving allowance under certain conditions. There are several tax credits: a general tax credit of EUR 2'242 (2016) is available for all taxpayers under the age of 65; all employees can claim an employment tax credit of EUR 1'047 (born after 01.01.63) or EUR 2'242 (born before 01.01.63), furthermore, there are other tax credits such as for children, single parents and senior citizens. The tax rates for 2016 for income of Box 1 are: 36.55% on income up to EUR 19'922, 40.4% on EUR 19'922 to EUR 66'421 and 52% on income over EUR 66'421. The rates for the first two brackets include national social security premiums. The tax year in the Netherlands is the calendar year. Income tax returns have to be filed before 1 April of the following year, although extensions can be applied for. Employers have to withhold taxes on salaries under a PAYE system as an advance payment of income tax. If an individual has no other income than the salary the taxes withheld by the employer will often be the final taxes. Married persons and partners are taxed separately.

For incoming expatriates under certain circumstances there is a special 30% ruling if they have specific know and earn more than EUR 52'699 per annum (from 01.01.2016). The relief granted under the regime consists of a tax free allowance equal to 30% of the salary to be granted by the employer to cover expatriate costs.

Social Security

Besides national social security premiums included in the first two tax brackets, employers and employees pay the following: For 2016 employers have to contribute 6.75% on gross salaries up to a maximum of EUR 52'763 per year for health insurance; 6.38% as a disability insurance contribution and 0.34% as a variable risk-related contribution for disability insurance and work resumption premium on up to EUR 52'763; 2.44% for unemployment insurance; 0.50% child care contribution on up to EUR 52'763 per year and finally a variable pension contribution (approx. 1.5%) according to the activity sector. Employees have to contribute 6.75% on a maximum of EUR 52'763 per year for health insurance. This contribution is reimbursed by the employer and added to the taxable income.

Swiss Court rejects Dutch request for administrative assistance

In its decision of 21 March 2016 (A-8400/2015), the Swiss Federal Administrative Court ruled that no administrative assistance may be provided in response to a group request submitted by the Dutch tax authorities on 23 July 2015.

On 23 July 2015, the Dutch tax authorities made a request for administrative assistance in respect of UBS banking details and on the basis of the 2010 Netherlands-Switzerland Income Tax Treaty. The Dutch tax authorities indicated the criteria for identifying the UBS clients covered by the request without disclosing any client names. The initial decision of the Swiss tax authorities to provide assistance was appealed against by a concerned Dutch client of UBS.

The Swiss Federal Administrative Court ruled in favour of the taxpayer and held that no administrative assistance may be provided in response to the group request submitted by the Dutch tax authorities on 23 July 2015.

The Court stressed that the protocol to the Netherlands-Switzerland Income Tax Treaty (2010), which is an integral part of the treaty and therefore binding under international law, clearly states that the treaty prohibits group requests that do not disclose any names (commonly known as fishing expeditions). Switzerland is therefore not permitted to provide any administrative assistance in tax matters under the treaty in response to group requests that do not disclose the names of the persons involved in the examination or investigation.

Country Profile:

Mexico

Capital:	Mexico City
Population: 121’736’809 (July 2015 estimate)	
Language:	Spanish (official)
Exchange rate: 1.00 GBP = 24.88 MXN (30 March 2016) Mexican Peso ($)	
Time zone:	GMT -6 to GMT -8
Electricity:	127V / 60Hz
Cost of Living: Mexico ranked 137th most expensive world city - Mercer Worldwide Survey 2015	
Tax year:	1 January to 31 December

Income Tax

Employment income is subject to monthly withholding tax with rates ranging between 1.92% and 35% depending on income. Taxable employment income includes salaries, wages, directors’ fees, bonuses, gratuities, allowances, certain fringe benefits, benefits in kind and statutory employee profit-sharing distributions. Certain expenses are deductible when calculating annual taxable income. Employee’s transportation related to work as well as moving expense reimbursements, claimed as business expenses, are non-taxable for the individual. There are no personal allowances. Besides the particular deductions, individuals are also allowed to take general personal deductions, as of 2014, limited to the lower amount of 10% of the personal income (taxed and exempt) or four times the annual minimum wage (approx. MXN 292.16). Personal deductions may include expenses incurred for transporting the taxpayer’s children to schools in zones where transportation is compulsory; medical, dental and hospital expenses of the taxpayer and his dependants; fees paid for medical insurance, provided that the beneficiary is the taxpayer or his dependants; charitable donations, provided that they comply with the requirements established by the Ministry of Finance and to the extent they do not exceed 7% of the taxpayer’s taxable income derived in the previous fiscal year; and the real interest effectively paid with respect to mortgage loans for the taxpayer’s own dwelling, provided that the amount of the mortgage loan does not exceed 1.5 million investment units. Certain tuition fees qualify as personal deductions under specific conditions. A progressive tax reduction and the “employment subsidy” apply in the computation of the income tax on salaries. The employment subsidy is credited against the monthly withholding tax and it ranges from 0 to 407.02 MXN. As of 2014, individuals receiving income exclusively from salaries and interest not exceeding MXN 400’000 (interest income not exceeding MXN 100’000) per year are not obliged to file an annual income tax return unless such individual: (i) changes his employment; (ii) communicates to his employer of his decision to file his own annual return; or (iii) receives income from other categories or salaries from abroad. Tax returns must be filed by 30 April.

Social Security

All resident employed individuals and employers are required to make monthly social security contributions to the social security system (IMSS), with the amount based on the individual´s earnings. Employers are obliged to register their employees with the Mexican Institute of Social Security in order to pay a monthly contribution to the social security system. For calculation purposes, the employee’s salary may not be less than the general minimum salary in the federal district, or more than 25 times the GMS for all contributions. Approximately one third of the payments are withheld by the employer from the employees’ wages and the other two thirds are paid by the employer. The employer must pay both contributions on a bimonthly basis. For employee contributions, the rates for 2016 are: disability and survivors 0.625%; illness and maternity: for in-kind benefits if employee’s salary for social security contribution payment purposes (“employee’s salary”) is greater than three times the daily general minimum salary for Mexico City: 0.400 % of the difference between the employee’s salary and three times the daily general minimum salary for Mexico City; for economic benefits 0.25%; for benefits in kind received by pensioners 0.375%; mandatory retirement and old age 1.125%. Certain items are exempt subject to limitations, e.g. payment for overtime, labour bonuses and food coupons.

UK 2016 Budget attack on disguised remuneration loans

Within the Budget documents released on 16 March lies a note on addressing disguised remuneration avoidance schemes (chapter 5 paragraph 10 "A new charge on outstanding disguised remuneration loans").

This outlines how income tax and National Insurance Contributions (NIC) will be imposed on employee loans which are outstanding on 5 April 2019, irrespective of when the loan was advanced to the employee or individual. This means the new tax charge could be imposed on loans which were advanced even over ten years ago.

There are two forms of disguised remuneration loans:

- Employee benefit trust (EBTs) loans – used by company owners to extract funds from their own companies without paying high levels of income tax;

- Contractor loans - where an individual received a loan and a small salary from their "employer" which was usually based offshore.

In each case the loans were repayable but were usually never actually repaid or fully repaid. The employee is taxed on the interest free loan being deemed a benefit in kind, which can amount up to 4% of the loan (depending on the official rate of interest in the tax year), for the duration of the employment.

These EBT-type loan schemes have been in operation since the 1980s, and contractor loans have been commonly used since as early as the beginning of the century. HMRC maintain that these arrangements do not work. However, there must be a considerable chance that they do. Very few of those schemes have been taken to the tax tribunal, and when HMRC have won a case they have generally done so on technicalities concerned with the implementation. New tax rules to stop disguised remuneration were introduced from 9 December 2010 and 6 April 2011 (ITEPA 2003, Part 7A).

HMRC have offered settlement opportunities for those individuals who took up EBT or contractor loan schemes, which required the individuals to agree to pay PAYE and NIC on all the loans they received. HMRC have also highlighted the contractor loan schemes to demonstrate disapproval and they are doing everything in their power to combat the schemes that used such loans for tax avoidance purposes.

Those who used contractor loans but who haven't taken up a settlement opportunity are now receiving accelerated payment notices (APN) where their tax return is under enquiry. The APN is often based on estimated figures as HMRC don't know exactly how much loan was advanced, so are guessing at six times the contractor's salary.

The creation of an APN forces the taxpayer to pay the tax demanded as the APN cannot be appealed. If the tax is not actually due, the taxpayer has to force HMRC to conclude their enquiry by going to tribunal. The proposed tax charge will be imposed on an outstanding loan if income tax has not been paid on that loan (even where income tax was not due under the tax law in place when the loan was advanced). The new charge will not be imposed if the taxpayer has reached a settlement with HMRC, or otherwise paid tax on the loan as if it was salary.

David Kirk, an expert on employment taxes, said: "HMRC have for a number of years made it plain that they will not tolerate tax avoidance in this area. However, they have often been very slow to act in practice, and this has left people with the feeling that they had dropped their cases. Whilst the Government has every right to change the rules, I do have concerns about four particular things with this proposed tax charge:

1. "The tax can be raised on historical loans of any age, so it could relate to actions taken over 20 years ago.

2. The records relating to historical loans will often be lost and are difficult to reconstruct.

3. Individuals were often sold the loan schemes by IFAs and accountants, in some cases quite aggressively. There is consumer protection law to assist victims of this sort of miss-selling when it comes to investments; however, in this case HMRC seem to be going for the victims instead of the real culprits.

4. The tax charge should fall on the employer, but it will be transferred to the employee/contractor."

Kirk concludes that many former contractors could face hefty retrospective taxes and penalties and also says the charge is deeply unfair as in many cases the tax was not payable under the law that existed when the loan was advanced (pre December 2010).

About Capital Consulting

At Capital Consulting, we believe that working abroad should be an enjoyable and profitable experience. We aim to make consultants' and agencies' lives as straightforward as possible whilst ensuring their affairs are structured in a legitimate and tax efficient manner.

The group has been operating from Neuchâtel, Switzerland, since 1990 and currently has a turnover in excess of CHF 70'000'000. During this time we have built a team of qualified specialists with wide experience in the areas of international contracts, taxation and social security.

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