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Seminar J

**Taxation of sportspersons,
sport organizations
and sport events**



Introduction

Han Kogels, *Professor em. at Erasmus University Rotterdam*



Focus of this IFA Seminar



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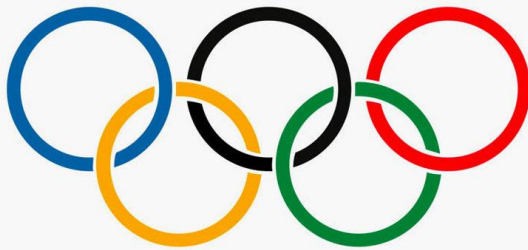
- Taxation of Entertainers and Sportspersons has been subject of IFA Seminars in 1995 (Cannes), 2001 (San Francisco) and 2010 (Rome)
- Today we will extend our subject to the taxation of International Sport Organizations and mega sport events
- Such mega events generate billions of profits for the ISOs, mainly from broadcasting rights
- Nevertheless, the states who apply for hosting such events are required to guarantee extensive tax exemptions as a condition 'sine qua non'



Focus on three ISOs



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- Could countries with strong democratic traditions resist the power of ISOs?
- Are such exemptions in line with State aid rules?
- Is Article 17 OECD/UN still fit for purpose?

Four seasoned experts will go into these questions



- **Xavier Oberson**
will go into the tax position of the ISO in its country of residence and in the host country
- **Anna Gunn**
will take us into the aspects of State aid
- **Daniel Sandler and Jacques Sasseville**
will focus on the rationale of Art. 17 OECD/UN



Taxation of International Sports Organizations (ISOs)

Xavier Oberson, *Professor at Geneva University, Partner, Oberson Abels*



I. Introduction

A. General organization of sport



- Professional sport is generally organized as a hierarchical pyramid.
- At the top level of the pyramid, confederations are affiliated to the international federation.
- Usually, ISOs are the right holders of an international sports event.



I. Introduction

B. Switzerland, the Residence State



- With 46 international sports organization currently in its territory, Switzerland is the main place of residence of these organizations.
- In particular, all three of the sports bodies organizing the mega sporting events, FIFA, IOC and UEFA are resident in Switzerland.
- The second rival is Monaco, who only has five international organizations established in its territory.

I. Introduction

B. Switzerland, the Residence State





I. Introduction

C. Preliminary remarks on today's analysis



- We will therefore concentrate on the international tax aspects, **from a Swiss perspective.**
- ISOs take usually the form of associations. They are **legal person** under (Swiss) *domestic law*.
- However, ISOs do not benefit from the legal personality under *public international law*.

II. Tax regime in the resident State

A. General rule

- Corporate profit tax is levied under Swiss law both at the federal and cantonal level on all legal entities as defined under Swiss law and notably on companies (LLC) and associations.
- Tax is levied by the cantons, on behalf of the Confederation, which then refund the federal share to the Confederation.
- Tax is due on net worldwide profits, to the exception of profits attributable to a foreign real estate, enterprise or permanent establishment.



II. Tax regime in the resident State

A. General rule (cnt'd)



- As such, ISOs resident in Switzerland are subject to corporate federal and cantonal profit tax and to the cantonal capital tax (on the net equity).
- Residence defined as the place where the legal entity has its legal seat or the place of its effective management (art. 50 THL).
 - Effective management is currently often used to deem as Swiss resident, foreign offshore entities effectively managed from Switzerland (see e.g. “BVI case” of 2003; “Guernsey case” of 2014).

II. Tax regime in the resident State

B. Tax exemption ('public service goal')



- **However**, in practice ISOs are generally **exempt from profit tax**, based on the “public service goal” exception.
- **Circular of July 8, 1994**, the granting of the exemption is subject to both general conditions and specific conditions for either public service or public utility exemption. The general conditions are: legal person; exclusivity; irrevocability; and effective pursuit of the legal goal.
- Tax exemption is also possible under the new Federal Host State Law of June 2007. Currently, it appears that ISOs have not requested the benefit of this law.

II. Tax regime in the resident State

B. Tax exemption (Circular Letter)



- A **Circular Letter** was published by the Federal Tax Administration on **12, December 2008**, which confirms that ISOs residing in Switzerland and affiliated to the IOC are tax-exempt (under Art. 56 lit g DTL).
- The exemption is limited to **direct** taxes (profits and capital) but **does not include VAT**.
- This exemption applies exclusively to ISOs themselves and not to their employees, board members, officials and similar individuals.

II. Tax regime in the resident State

C. Other examples



- Other ISOs based in other countries also benefit from similar tax advantage (Ireland, Monaco).
- ISOs may sometimes also take the form of a company (see eg. the International Cricket Council, or the International Tennis Federation, which is a limited company, resident in the Bahamas).

II. Tax regime in the resident State

D. Application of DTTs



- ISOs organizing major sports events may receive various types of income which could be subject to tax abroad and notably in the Host State.
- To benefit from a DTT, an entity must qualify as a resident for treaty purposes.
- Most Swiss DTTs adopt art. 4 OECD MC:
 - “Resident of the contracting State, means any person who, under the laws of that State is liable to tax therein by reason of its domicile, residence, place of management or any other criterion on similar nature”.

II. Tax regime in the resident State

D. Application of DTTs (cont'd)



- Accordingly, the qualification as a resident for the purpose of the treaty refers to Swiss domestic law and requires that the entity is an unlimited taxpayer under Swiss law.
- Switzerland follows the view that entities benefitting from a tax exemption based on Swiss tax laws, in particular because of a goal of public interest, are ‘residents’ for tax purposes (see also the OECD Commentary ad Art. 4).
- This rule is also embodied in some DTTs (for instance Art. 4 par. 1 lit c (ii) of the US-Swiss treaty).
- **This view is not necessarily shared by all countries.**

III. Taxation of the ISO in the Host State

A. General issues: tax exemptions



- In general, ISOs are the owners of the mega sports event.
- From the commercial exploitation of the sports event, ISO may receive various types of income (e.g., fees from broadcasting rights, sponsorship, marketing, royalties, ticketing income, dividends).
- Due to their powers, the ISO may, during the bidding process, obtain significant tax advantages from the Host State

III. Taxation of the ISO in the Host State

B. Creation of a PE?



- In general, ISOs are usually non-residents of the Host State.
- ISO could also be subject to tax in the Host State if it performs activities there through a permanent establishment (PE).
- In general, however, the National Organizational Committee, which is a different legal entity, is neither a branch nor a subsidiary of the ISO.
 - It is **resident in the Host State** and is **subject to corporate tax in that State**.
- Problems could however arise (notably in the digital commercialization of the tickets).



PANEL DISCUSSION

The tax treatment of the National Football League





State aid and sports

Anna Gunn, *PhD Researcher at Leiden University*



- **What is “State aid”? (Art. 107(1) TFEU)**
 - Advantage from State resources; and
 - Selective character; and
 - Granted to an “undertaking”; and
 - Distortive impact on the internal market.
- **State aid is sometimes compatible**
- **Monitoring under Art. 108 TFEU**



State aid rules ensure fair competition in the internal market.

- **What does fiscal State aid look like?**
 - Selective tax exemptions, tax breaks or lower rates
 - Selective super-deductions, accelerated depreciation
 - Tax amnesties and waivers
 - Special tax regimes, tax rulings and overly beneficial APA

- Promotion of sport is an EU objective.
 - Article 165(1) TFEU: “The Union shall **contribute to the promotion of European sporting issues (...)**”
- But: State aid rules do still apply!
 - Broad notion of ‘economic activities’; profit motive is not essential!



Three case studies - discussed in this presentation



- UEFA 2016 French Tax Exemptions
- Renovation of French stadiums for EURO 2016
- Measures for NL and Spanish football clubs



Example 1: UEFA 2016 Tax Exemptions



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- French tax exemptions for SO's
 - Introduced in 2014; run up to UEFA's EURO 2016
 - Exemptions for a number of different taxes
 - Key criteria for qualifying sports organizations (CGI Art. 1655):
 - 1) Awarded through a selection by an international committee
 - 2) Equivalent to a European championship
 - 3) Organized exceptionally on French territory
 - 4) Exceptional economic benefits
- Questions asked in EU Parliament

- **Aid granted by France**
 - Construction and renovation of nine stadiums for EURO 2016
 - Generally: stadiums are owned by municipal council; State funds used to get things up to the UEFA standards (e.g. safety, comfort)
 - Non Tax Aid (subsidy)
- **Approved by EC**



Example 3: Measures for football clubs



- **Investigations into aid to Spanish and Dutch football clubs:**
 - Opened in 2013; final decisions in 2016
 - A “new step” in enforcement of State aid rules vis-à-vis sports?
 - Various different measures, incl. tax

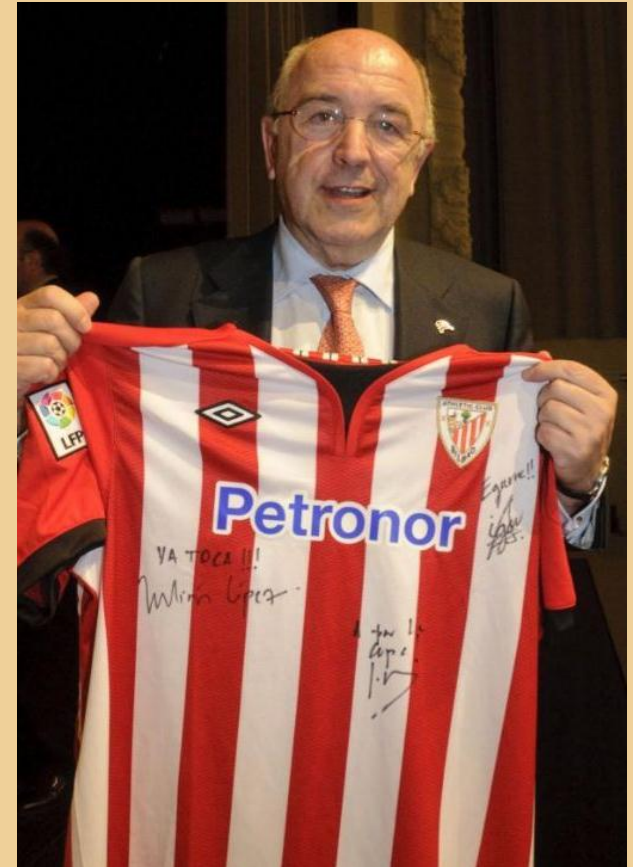


Political dimension?



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- Former EU Commissioner for Competition, Joaquin Almunia, conflict of interest?





PANEL DISCUSSION



Sportspersons participating at mega sport events

Daniel Sandler, *Partner EY Law LLP (Toronto)*

Jacques Sasseville, *OECD*

- Article 17 OECD/UN permits source taxation of income derived by a sportsperson “from personal activities as such” exercised in a State
- A brief history of Article 17: is taxation where the services are performed an exception or the basic rule?



History of Article 17



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- Scope of paragraph 1
- Scope of paragraph 2
- Alternative versions
 - *De minimis* rule (US and OECD)
 - Employees of sports teams

Article 17 OECD/UN



Interpretation and application Art. 17



- Who is a sportsperson?
- Employee or independent contractor
- What is income derived from “personal activities as such”?
 - Salary/bonus
 - Participation/performance fees
 - Endorsement income
- Application of Art. 17(2)
- “Notwithstanding ... Art. 15 ... may be taxed” = additional right to tax

- Domestic law issues:
 - Withholding taxes
 - Gross or net
 - What expenses (if any) are deductible?
 - Tax return / refund



Exemption required by ISO



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- IOC / FIFA / UEFA now typically require an exemption from source taxation as a requirement of granting event to host country(ies)
 - Scope of exemption varies
 - Rationale for exemption
 - Implementation of exemption
 - Amendments to domestic legislation
 - Administrative concession re collection
- What about other mega sport events?

Other mega sport events (1)



Other mega sport events (2)



Other mega sport events (3)



Other mega sport events (4)



Rationale ?



- What is the rationale for distinguishing certain mega sport events from other sport (or entertainment) events?
 - Can/should we abolish the distinction?
- What is the rationale for Article 17 of the OECD Model?
 - Should we abolish that rule?



PANEL DISCUSSION