



OECD
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Brussels, 4th December 2020

Dear Mr. Saint-Amans,

On 7 September the OECD published a report entitled 'Culture Shock: COVID-19 and the cultural and creative sectors'¹. The report describes the impact of the Covid crisis on the cultural sectors and gives an extensive and thorough picture of the labour market situation and the impact of the crisis on those sectors, including the live performance sector.

In a joint statement² published on the 14th of October 2020, European social partners in the live performance sector emphasized that: "The economic impact of the crisis has hit the sector very hard as venues were entirely shut down and countless tours and events were cancelled. The sector has a high percentage of SMEs, freelance and self-employed workers who are very vulnerable and often face limited access to, or overall exclusion from, cross-sector financial and economic relief programmes or social support schemes that mitigate the impact of the crisis."

Over many years, the European social partners in the live performance sector, represented by Pearle*-Live Performance Europe on the management side and by the European Arts and Entertainment Alliance (composed of FIM, FIA, UNI MEI) on the workers side, have asked the OECD for an initiative to abolish the discriminatory situation arising from article 17 in the OECD Model Tax Treaty.

For the past forty years, artists have suffered the consequences of Article 17 of the OECD Model Tax Treaty, which allows signatory countries to apply source taxation in the country of performance. The Article was introduced to counteract tax avoidance behaviour which in

¹ <http://www.oecd.org/coronavirus/policy-responses/culture-shock-covid-19-and-the-cultural-and-creative-sectors-08da9e0e/>

² European Social Partners of the Live Performance Sector call for a coordinated action plan to secure the recovery and sustainability of the European cultural sector – joint statement 14 October 2020

practice arises only in relation to a very limited number of (usually famous and high earning) performing artists and sportspeople.

Since the introduction of the article more than 90% of artists with an average or low income are confronted with excessive or double taxation on that income. We have communicated this problem in papers and letters to the OECD in past years. It was also thoroughly documented in a 2015 European Commission report³ on ways to tackle cross-border tax obstacles.

The OECD report 'Culture Shock' provides up to date data on the income structure of artists. It shows that Article 17 is ill-adapted to the purpose for which it was designed, i.e. to tackle tax avoidance of high-earning artists, as mentioned above. In fact, it affects employers and the very large majority of those artists in the sector who earn some income from performing abroad. Although options for tax credits do exist, in practice, especially in light of the frequency and very short-term nature of such contracts, it is very cumbersome and simply not workable to make use of these options. This in turn means that employers and individual artists take the attitude of merely accepting the taxation in the country of performance as a loss of income.

After the publication of the OECD commentary to Article 17 we called upon governments to abolish article 17 from DTT or at least introduce the threshold as proposed by the OECD in the 2014 Commentary: de-minimis-rule of 15.000 IMF SDR (or a dynamic threshold, or the \$30,000 from the US Model). Some countries have shown interest in addressing the matter but progress is slow and does not address the essence of the problem.

As part of the recovery measures to allow the sector to re-start activities in the form of touring and performances abroad as of 2021, an OECD initiative on article 17 would be particularly welcome in the form of a proposal to revise article 17, or through issuance of guidance to member states on a tax policy initiative to stimulate the recovery and support resilience.

As communicated in our previous correspondence, we recall that it would be very welcome for the OECD to move to:

- Remove Article 17 from the OECD Model
- or
- Insert a threshold in Art. 17(1), comparable with the US Model
 - Restrict the scope of Art. 17(2), comparable with the US Model
 - Insert the exemption for activities by public funds in Art. 17(3), as in common nowadays in 70% of the tax treaties (and comes from §14 of the Commentary on Article 17)
 - Exclude employees from Article 17(1) and (2) (as mentioned in §2 of the Commentary on Article 17)
 - Insert the deduction of expenses and normal tax settlements in Art. 17(1) and (2) (as mentioned in §10 of the Commentary on Article 17)

Exceptional circumstances call for exceptional actions. We believe that the time is right to present such initiative to member states and to ask the OECD to consider making a proposal in this direction.

We note that the OECD publishes data sets on tax policy measures. In this regard we would ask whether the OECD could consider including actions of countries that change their fiscal

³ Commission Group of experts on removing tax problems facing individuals who are active across borders within the EU- [report](#) Ways to tackle cross-border tax obstacles facing individuals within the EU – Nov 2015

legislation in relation to Article 17 in the data set⁴ on tax policy measures, as a particular and defined option to support recovery to overcome the Corona-crisis. The inclusion of the option in the data set is a soft mechanism to invite member states to reflect on such abolition as an instrument to support the sector in the framework of general approach to tax and fiscal policies in response to the Coronavirus Crisis.

As social partners we are convinced that a solution to double and excessive artiste taxation is an essential instrument to support the recovery of the sector which belongs to the hardest hit among all economic sectors. When touring and performances abroad are again possible the sector needs to be able to do so in full capacity and not with the knowledge of being confronted with further cross-border tax burdens.

On behalf of our members and affiliates representing thousands of organisations and employers and over 600.000 workers, we thank you in advance for taking interest in our concerns.

We are at your disposal to provide any further information.

Yours sincerely

Benoît Machuel
European Arts & Entertainment Alliance

Morten Gjelten
President Pearle*-Live Performance Europe

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⁴ <http://www.oecd.org/tax/tax-policy/tax-database/>

And also 'Tax and fiscal policy in response to the Coronavirus Crisis: Strengthening Confidence and Resilience' – [OECD report May 2020](#)