

## Information Bulletin

### Tax Information for Overseas Touring Artists performing in Spain - Sales/VAT Taxes and Withholding Tax Regimes

#### General

**Spain** provides for certain exemptions, under its various double taxation agreements, for activities funded from public funds as well as providing a threshold of US\$10,000 or the Euro equivalent in the key United States Double Taxation Agreement (DTA).

VAT (IVA) on ticket sales is 21% with show costs subject to varying rates from 4%, 10% and up to 21%.

Withholding tax is levied on Artist earnings from touring revenue generated in Spain at a rate of 24% for non-EU artists/companies and 19% for EU artists/companies. Currently, Artist earnings can be viewed as including separate Production company fees (see paragraph below re the “U2 case”).

An artist can file a form 210 for income earned, by the end of the last month of each quarter. In this case, EU entities can deduct all expenses pertaining to a Spanish show. In the case of non-EU entities, personnel costs and cost of materials brought into Spain and supplies in Spain only are deductible. It is paramount to provide detailed back-up to support production costs in the form of budgets, contracts and invoices along with official evidence of the tax residence of the production company. However, please note the paragraph below re the “U2 case”.

On 7 December 2012, the Spanish Supreme Court adopted its judgment on the “U2 Case”. The Judgment found the Spanish promoter that organized two U2 concerts in Spain in 1997, liable for unpaid withholding taxes on artist income. The Supreme Court reversed a prior National Court decision in Spain and thereby rejected the separate Technical Materials and Services fees as being business profits and treating same as Artist income. This is not in accord with the DTA but will dictate future treatment and assessments by the Spanish Tax Authorities with withholding taxes likely deducted on all fees by the local promoters.



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#### Sales Tax/VAT Rates in Spain

The following are the VAT (IVA) rates applicable to touring activities in Spain:

- Ticket Sales – 21% divisive tax
- Costs – 21% (there are reduced rates of 10% and 4% applying to certain basic necessities)
- Merchandise
  - Standard – T-Shirts etc. 21 %
  - Books 4 %
  - Programs 4 %

## Withholding Tax Rates in Spain

Artist Fees	24%	
Production Fees	24%	
Promotion Fees	24%	
Royalties	5%	(United States—but see <b>Note 1</b> below)
Royalties	0%	(United Kingdom)

### Note 1

Under the Spain—United States Double Taxation Treaty, royalties for copyright on literary, theatre, musical or artistic work are taxed at a 5% rate as opposed to the standard 10% rate. Royalties on films or other means of audio or video transmission, for the use or right to use industrial, commercial or scientific equipment or over scientific works or under agreements between both states are taxed at a 8% rate.

## Double Taxation Treaties

### Spain—United States

The Spain-United States Tax Treaty section devoted to income derived by Artistes and Athletes is Article 19, which Article is transcribed below. The Article provides for withholding tax to be levied, except where the amount of the income derived by the Artiste or Athlete from such activities, does not exceed US\$10,000 or the Euro equivalent, for the taxable year concerned.

The full Article reads as follows:-

#### Article 19 – Artistes and Athletes

1. Notwithstanding the provisions of Articles 15 (Independent Personal Services) and 16 (Dependent Personal Services), income derived by a resident of a Contracting State as an entertainer, such as a theatre, motion picture, radio, or television artiste, or a musician, or as an athlete, from his personal activities as such exercised in the other Contracting State, may be taxed in that other State except where the amount of the compensation derived by such entertainer or athlete, including expenses reimbursed to him or borne on his behalf, from such activities does not exceed ten thousand United States dollars (\$10,000) or its equivalent in pesetas (Euros) for the taxable year concerned.
2. Where income in respect of activities exercised by an entertainer or an athlete in his capacity as such accrues not to the entertainer or athlete but to another person, that income of that other person may, notwithstanding the provisions of Articles 7 (Business Profits) and 15 (Independent Personal Services), be taxed in the Contracting State in which the activities of the entertainer or athlete are exercised, unless it is established that neither the entertainer or athlete nor persons related thereto participate directly or indirectly in the profits of that other person in any manner, including the receipt of deferred remuneration, bonuses, fees, dividends, partnership distributions, or other distributions.
3. Notwithstanding the provisions of paragraphs 1 and 2, income derived by a resident of a Contracting State as an entertainer or athlete shall be exempt from tax by the other Contracting State if the visit to that other State is substantially supported by public funds of the first-mentioned State or a political subdivision or local authority thereof.

## Double Taxation Treaties (continued)

### Spain—United Kingdom

The Spain - United Kingdom Tax Treaty has a separate section (Article 16) devoted to income derived by Artistes and Sportsmen. The revised treaty applies on or after 12 June 2014. The Article is transcribed below and provides for withholding tax to be levied by the State in which the activities of the Artist are exercised. This also applies where the income accrues not just to the entertainer but also to a third party. There are no provisions which would exclude such amounts from withholding tax on the Artist.

However, as noted earlier, even though the United Kingdom Treaty provides for across the board taxation on all fees paid to non-resident parties arising from an Artist's personal activities, the on-the-ground application of tax law in relation to production companies may vary by promoter, with the filing of a Form 210 providing the artist with an opportunity to claim a deduction for all expenses incurred on Spanish performances.

The full Article reads as follows:-

#### Article 16 - Artistes and Sportsmen

1. Notwithstanding the provisions of Articles 7 and 14, income derived by a resident of a Contracting State as an entertainer, such as theatre, motion picture, radio or television artiste, or a musician, or as a sportsman, from his personal activities as such exercised in the other Contracting State, may be taxed in that other State.
2. Where income in respect of personal activities exercised by an entertainer or a sportsman in his capacity as such accrues not to the entertainer or sportsman but to another person, that income may, notwithstanding the provisions of Articles 7 and 14, be taxed in the Contracting State in which the activities of the entertainer or sportsman are exercised.

*Note the more favourable treatment of United States production companies as opposed to United Kingdom production companies in the DTA's whereas the on-the-ground treatment often favours an EU company.*

*In the United States DTA where split contracts are utilised and the contracting parties are the Artist company and a separate independent production company, the DTA provides that fees paid to the independent production company are tax-free. The "U2 case" has altered adversely the stance of the Spanish Tax Authorities in this regard such that these fees are now deemed to be subject to withholding tax.*

*In all cases, whether to the promoter or in filing a 210 form for withholding tax reclaim, it is paramount to provide detailed backup to support production costs in the form of budgets and actual costs, contracts and invoices along with official evidence of the tax residence of the independent production company.*

*The local treatment is still evolving and there will be appeals and rulings in the future.*



***tmi business management*** — providers of *Financial and Taxation Services to International Touring Artists*

*We are based in Ireland, with associates in The Netherlands and Canada.*

*If you would like some more information please contact our President, Philip Brennan, directly using the contact details provided.*

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*Philip*

The enclosed taxation information is for the user's guidance only. The information is designed to outline certain tax rates and tax issues in the countries concerned. It is not intended to be a definitive guide to action but should you need more information or more advice please do not hesitate to contact us at the details noted above. We hope you will find this information helpful.

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