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## The Personal Tax Planning Review

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# REDUCED WITHHOLDING ARRANGEMENTS FOR VISITING ENTERTAINERS AND SPORTSMEN

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With effect from 1st May 1987<sup>2</sup> a system of deduction of tax at source was introduced<sup>3</sup> for payments (in cash or in kind) made in connection with the performance of relevant activities in the UK<sup>4</sup> by non-resident entertainers or sportsmen. The payments need not be made direct to the entertainer or sportsman as payments to third parties may also be within the deduction scheme. A duty is imposed on the person making the relevant payments to deduct and account to the Revenue<sup>5</sup> for an amount equivalent to the basic rate of income tax for the year of assessment in which the payment is made<sup>6</sup>. A

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<sup>2</sup> The date when the IT (Entertainers and Sportsmen) Regulations, SI 1987/530 (see Division H2.2) came into force. TA 1988 s.555(7).

<sup>3</sup> By FA 1986 s.44, Schedule 11, now TA 1988 ss.555-558.

<sup>4</sup> See AI.153 as to the extent of the UK for this purpose.

<sup>5</sup> The deduction scheme is administered by a special Revenue office, The Foreign Entertainers Unit, 5th Floor, City House, 140 Edmund Street, Birmingham B3 2JH, tel: 021 200 2616, fax: 021 233 3483. An explanatory booklet, "FEU50: Payer's Guide - Foreign Entertainers", may be obtained from the Unit for current version, see Division H 3.5.

<sup>6</sup> IT (Entertainers and Sportsmen) Regulations, SI 1987/530 reg 4(2) (see E5.803). Revenue publication FEU50, para A1.

reduced rate of deduction may apply if a special arrangement is negotiated with the Revenue<sup>7</sup>.

The detailed administrative provisions of the scheme are set out in regulations made by statutory instrument<sup>8</sup>. In particular, the category of entertainer or sportsman and the activity to which these provisions apply are prescribed by the regulations.

The system of deduction of tax at source is a collection mechanism which applies to payments or transfers in connection with a relevant activity performed by the entertainer or sportsman and on which the withholding tax requirement applies to the payer. The entertainer or sportsman, however, is deemed to be carrying on a trade or profession in the UK, the profits or gains from which are subject to UK tax. The ultimate liability may therefore be greater or less than the amount of tax withheld, resulting in an overpayment or underpayment of tax.

The final liability to UK tax may be precluded under a double tax treaty, for example where the entertainer is appearing as part of a state funded cultural exchange with a country which specifically excludes such activities from the usual double taxation exclusion of sportsmen and entertainers<sup>9</sup>. However, there are no provisions, as with interest and dividends, to have treaty protected income paid without deduction of tax at source and the payer has to deduct tax from payments made by him whether or not the recipient is ultimately treaty protected unless a special arrangement is in force<sup>10</sup>.

It is often argued that the UK Inland Revenue can only look beyond the direct remuneration of the entertainer or sportsman where the double tax treaty includes the equivalent of Article 17, paragraph 2 of the OECD Model Convention. Whilst this was true prior to the Finance Act 1986, the UK "look through" provisions<sup>11</sup> enable the UK Revenue to tax a non-resident sportsman

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<sup>7</sup> IT (Entertainers and Sportsmen) Regulations, SI 1987/530 reg 5.

<sup>8</sup> IT (Entertainers and Sportsmen) Regulations, SI 1987/530 (see Division H.2).

<sup>9</sup> See particularly F1.212, 222, 227, 228, 230. Revenue publication FEU50, para A8.

<sup>10</sup> IT (Entertainers and Sportsmen) Regulations, SI 1987/530 reg 5.

<sup>11</sup> TA 1988 ss.555 to 558 and IT (Entertainers and Sportsmen) Regulations, SI 1987/530.

or entertainer wherever the treaty protection is removed by a restriction on the personal services provisions or a separate sportsmen and entertainers article. The commentary on the OECD Model Treaty Article 17, paragraph 1, states that it applies to income derived both directly and indirectly by an individual artiste or sportsman. In some cases the income will not be paid direct to the individual or his impresario or agent. For instance a member of an orchestra may be paid a salary rather than receive payment for each separate performance.

Under Article 17, paragraph 1, a contracting state may tax a proportion of the musician's salary which corresponds to a performance in that state. If an artiste or sportsman is employed by, e.g., a connected company, the state where the performance takes place may tax an appropriate proportion of any remuneration paid to the individual. Where, as in the UK under the entertainers and sportsmen provisions, the domestic laws look through such entities and treat the income as accruing directly to the individual, the state in which the performance takes place may under Article 17, paragraph 1, tax the income derived from appearances in its territory and accruing in the connected company for the individual's benefit, even if the income is not actually paid as remuneration to the individual<sup>12</sup>.

The only double taxation agreements to which the UK is a party which do not disapply the treaty protection for entertainers and sportsmen are those with Gambia and the countries of the former USSR<sup>13</sup>.

Treaty protection is not lost in the case of government employees. Article 19 of the 1992 Model Convention provides that where the artiste or sportsman is employed by a government and he or she derives the income from that government, such income is to be treated as protected. Certain agreements also contain provisions excluding from the application of Article 17 artistes and sportsmen employed in organisations which are subsidised out of public funds.

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<sup>12</sup> Commentary on OECD Model Convention Article 17, para 8 F4.402.

<sup>13</sup> UK/Gambia Double Taxation Convention, SI 1980/1963; UK/USSR Double Taxation Convention, SI 1986/224.

The deduction at source scheme applies where -

- a) an individual<sup>14</sup>, who is an entertainer or sportsman,
- b) performs a relevant activity in the UK, and
- c) that individual is not resident in the UK in the year of assessment in which the relevant activity is performed<sup>15</sup>.

There is no requirement to deduct tax if the entertainer or sportsman is resident in the UK in the year of assessment in which the activity is performed even if he is non-resident in the year of assessment in which the payment is actually made.

In cases of doubt, application can be made to the Foreign Entertainers Unit who will advise whether an entertainer or sportsman is to be regarded as non-resident or not for the purpose of the withholding tax scheme<sup>16</sup>.

A relevant activity refers to an activity performed in the United Kingdom by an entertainer in his character as entertainer or in connection with a commercial occasion or event and includes -

- a) any appearance of the entertainer by way of or in connection with the promotion of any such occasion or event,
- b) any participation by the entertainer in or for sound recording, films, videos, radio, television or other similar transmission (whether live or recorded)<sup>17</sup>.

A commercial occasion or event includes any description of occasion or event -

- a) for which an entertainer (or other person) might receive or become entitled, for or by virtue of the entertainer's performance of the

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<sup>14</sup> TA 1988 s.555(1). IT (Entertainers and Sportsmen) Regulations 1987, SI 1987/530 reg 2(1).

<sup>15</sup> TA 1988, s.555(1).

<sup>16</sup> Revenue publication FEU50, para A7.

<sup>17</sup> IT (Entertainers and Sportsmen) Regulations, SI 1987/530 reg 6(2).

activity, to receive anything by way of cash or any other form of property; or

- b) which is designed to promote commercial sales or activity by advertising, the endorsement of goods or services, sponsorship, or other promotional means of any kind<sup>18</sup>.

The scope of activities covered by these provisions is very wide indeed and could technically include a charity performance given by a non-resident entertainer or sportsman. However, the Foreign Entertainers Unit takes the view that provided the only payments made to the non-resident entertainer or sportsman consist of the reasonable reimbursement of his travelling expenses and living expenses while in the UK and he is providing his services free of charge to a genuine charitable event, it would not seek to argue that one of the purposes of his appearance was to promote himself and thereby his records, films or whatever. In such circumstances the promoter paying the expense would enter into an arrangement for a nil deduction with the Foreign Entertainers Unit.

In determining whether the entertainer or sportsman is a non-resident, the question of residence is determined in the first instance according to the domestic UK residence rules<sup>19</sup>. Under double taxation treaties the treaty protection is effectively disapplied for entertainers and sportsmen in respect of their income from such activities and any residence clause or tie-breaker provision in the case of dual residence under a treaty has no application for such income. Where a dual resident taxpayer claims non-UK residence under a treaty this could affect the tax treatment of certain connected income such as merchandising royalties and other treaty protected income.

A person who makes a payment or transfer to whatever person which has a connection of a prescribed kind with the relevant activity of the entertainer or sportsman is required to deduct out of it a sum representing income tax which has to be paid over to the Revenue<sup>20</sup>.

A payment or transfer has a prescribed connection if it is made for, in respect of, or which in any way derives either directly or indirectly from, the

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<sup>18</sup> IT (Entertainers and Sportsmen) Regulations, SI 1987/530 reg 6(3).

<sup>19</sup> See Division E6.1.

<sup>20</sup> TA 1988 s.555(2), (3); Revenue publication FEU50, para B1.

performance of a relevant activity<sup>21</sup>. A requirement to deduct tax applies both to remuneration in the form of fees, prize money, etc., and to associated income from advertising, sponsorship and endorsements<sup>22</sup>. The Revenue guide gives some examples of payments as appearance fees, achievement bonus, exhibition income, box office percentage, TV rights, broadcasting/media fees, tour income, tournament winnings, prize money, advertising income, merchandising income, endorsement fees and film fees<sup>23</sup>.

The scheme applies to transfers of assets as well as to payments<sup>24</sup>. Deduction of tax is at the basic rate of income tax for the year of assessment in which the payment, or as the case may be, the transfer, is made<sup>25</sup>.

A payment is also excluded from the regulations if it is made to a person resident and ordinarily resident in the UK who is not connected with or an associate of the entertainer, and the payment is made for the provision of services ancillary to the performance of the relevant activity, and does not exceed what would be a reasonable amount if paid between persons dealing with each other at arm's length<sup>26</sup>. Ancillary services to a person resident and ordinarily resident in the UK include, for example, payments for hall hire, security, damages, carpentry, stage hands, public address equipment, lighting, equipment hire, advertising, ticket printing, hire of chairs, barriers or marquee, etc.<sup>27</sup>

Any payment made to an entertainer in respect of the proceeds of sale of records deriving from a sound recording made by the entertainer, being "royalty" payments calculated by reference to those proceeds or payments on

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<sup>21</sup> IT (Entertainers and Sportsmen) Regulations, SI 1987/530 reg 3(2). Revenue publication FEU50, para A3.

<sup>22</sup> Revenue Press Release, 4th June 1986, para 4; Simon's Tax Intelligence 1986 P398.

<sup>23</sup> Revenue publication FEU50, para A2.

<sup>24</sup> TA 1988 s.555(3).

<sup>25</sup> TA 1988 s.555(4).

<sup>26</sup> IT (Entertainers and Sportsmen) Regulations, SI 1987/530 reg 3(3)(b).

<sup>27</sup> Revenue publication FEU50, para A8.

account of those proceeds, are also excluded from the regulations<sup>28</sup>. The exemption for record sales includes black vinyl, prerecorded music cassettes or compact discs where the payment is based on the proceeds of sales or is a non-returnable advance on account of future sales<sup>29</sup>. On 13th March 1987 the Financial Secretary to the Treasury, the Rt Hon Norman Lamont MP, stated "in the light of the representations we have decided to exclude payments which arise from the sale of records from the scope of the regulations. This reflects the fact that they are currently treated as exempt from tax under many of our double tax treaties"<sup>30</sup>.

The deduction scheme is not confined to payments made to the non-resident entertainer or sportsman. Payments which are connected with the relevant activity but made to a third party may also be subject to the scheme.

Where tax has been deducted from a payment the payer must provide the recipient with the tax deduction certificate in the prescribed form FEU2<sup>31</sup>.

The forms of ancillary income to which the deduction at source scheme applies is very widely drawn and does not have to have a direct connection with the UK appearance. Endorsement fees paid to a tennis player using sports equipment in a UK tournament would be linked<sup>32</sup>. The UK is unusual in including merchandising income within entertainers' withholding tax regulations.

Venue merchandising clearly comes within the definition of being derived indirectly from the performance unless it is specifically treaty protected<sup>33</sup>. The precise protection given against piracy which justifies a "Name and Likeness" licence agreement may be a mixture of copyright, trademark and passing off.

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<sup>28</sup> IT (Entertainers and Sportsmen) Regulations, SI 1987/530 reg 3(3)(c).

<sup>29</sup> Revenue publication FEU50, para A8.

<sup>30</sup> Inland Revenue Press Release, 13th March 1987; Simon's Tax Intelligence 1987 P112.

<sup>31</sup> IT (Entertainers and Sportsmen) Regulations, SI 1987/530 reg 12(5) (see E5.806).

<sup>32</sup> Revenue publication FEU50, para A5.

<sup>33</sup> *Clark v Oceanic Contractors Inc* [1983] STC 35.

The OECD 1992 Model Convention royalty article defines the term "royalties" as meaning "payments of any kind received as a consideration for the use of or the right to use any copyright of literary, artistic or scientific work, including cinematographic films, any patent trademark design or model plan, secret formula or process, or for information concerning industrial, commercial or scientific experience". Although merchandising royalties may be related partly to the entertainer or sportsman's copyright they are nevertheless not, necessarily, entirely within the definition of copyright of literary, artistic or scientific work. They may therefore not be protected by Article 12 of the Model Convention or its equivalent in the actual double taxation treaties and may therefore remain within the definition of payments indirectly derived from the performance of a relevant activity and within the deduction of tax at source rules.

In view of the time constraints on reduced withholding arrangements it is likely that any question of treaty protection could only be dealt with after the end of the tax year on a formal claim under the appropriate treaty and would be looked at with the accounts covering the UK activities in the year. It is not possible to eliminate an income stream, such as treaty protected royalties, without considering the effect this has on the associated expenses and whether apportionment is necessary to disallow part of the expenses which relate to the treaty protected income.

Tour support is frequently provided by a record company as a cash advance in order to finance a tour, one of the results of which is hoped to be an increase in record sales. Very often tour support takes the form of a recoupable advance out of record royalties and would therefore be outside the entertainers and sportsmen withholding tax regulations and would be subject to the normal withholding tax regulations relating to royalties. Tour support in the form of a non-recoupable grant would be a receipt within the regulations and subject to withholding tax or brought within a reduced withholding tax arrangement. The existence of tour support from the record company emphasises the dual purpose of a tour, to earn performance fees and to sell more records, which means that part of the tour expenses may be disallowed as relating to record sales where the income stream of record royalties is left out of account.

A payment by one non-resident entity to another non-resident entity in respect of the services of an entertainer or sportsman to be performed in the UK is not normally within the withholding tax deduction scheme provided that neither the payer nor the payee has a permanent establishment, place of business or tax presence in the UK, although the whole question of territoriality is a complex

one<sup>34</sup>. The entertainer, however, could still have a Schedule E Case II liability for services performed in the UK or a Schedule D Case II liability if self employed. In many cases when such an arrangement is looked at in detail it will be found to be part of a commercial deal, such as a film co-production, which includes a UK resident partner or agent who can be brought within the withholding tax scheme.

### **Payment or Transfer Made to Third Party**

Payments which are made to a third party rather than to the entertainer or sportsman but are nonetheless connected with the provision of his services as such in the UK, are also subject to the tax deduction scheme if the third party is within any of the following categories<sup>35</sup>

- a) Any person who is under the control of the entertainer<sup>36</sup>. Control for this purpose is ability to exercise or entitlement to acquire control for close company purposes<sup>37</sup>.
- b) Any person who is not resident in the UK, and is not liable to tax by reason of residence, domicile, place of management or otherwise in a territory outside the UK where the rate of tax charged on the profits or income is at a rate exceeding 25%<sup>38</sup>.
- c) Any person in receipt directly or indirectly of a connected payment, or value transferred by a connected transfer, which is treated as or falls to be included in the computation of income arising under a settlement in relation to which the entertainer is a settlor. For this purpose, the income tax definition of income arising under a settlement is used with the definition of the settlor as any person by whom the settlement was

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<sup>34</sup> IT (Entertainers and Sportsmen) Regulations, SI 1987/530 reg 3(2). Revenue publication FEU50, para A3.

<sup>35</sup> TA 1988 s.556(2). IT (Entertainers and Sportsmen) Regulations, SI 1987/530 reg 7.

<sup>36</sup> IT (Entertainers and Sportsmen) Regulations, SI 1987/530 reg 7(2)(a).

<sup>37</sup> IT (Entertainers and Sportsmen) Regulations, SI 1987/530 reg 2(1). TA 1988 s.416(2) to (6).

<sup>38</sup> IT (Entertainers and Sportsmen) Regulations, SI 1987/530 reg 7(2)(b).

made<sup>39</sup>. However, the definition of settlement is that relating to settlements on children for income tax purposes, which includes any disposition, trust, covenant, agreement, arrangement, or transfer of assets<sup>40</sup>.

- d) Any other person who receives any connected payment or connected transfer (directly or indirectly) when there is in force a contract or arrangement under which it is reasonable to suppose that the entertainer or other person who is connected with, or is an associate of, the entertainer, will or may become entitled to receive amounts whether by way of cash or other value not substantially less than the appropriate amount of profits or gains arising from the connected payment or connected transfer<sup>41</sup>. This would include, for example, payments to a limbo trust or company owned by such a trust where the entertainer was not the settlor or deemed settlor<sup>42</sup> but where there was an intention to appoint him or members of his family as beneficiaries at some time in the future, or where the entertainer was an employee of a company under a salary related to a substantial proportion of the company's net receipts. The close company definition of associate is used<sup>43</sup> and the normal income tax definition of connected person applies<sup>44</sup>.

A payment to a third party which is within the scheme is both subject to deduction of tax by the payer and treated as made to the entertainer or sportsman in the course of his deemed UK trade<sup>45</sup>. The profits of that deemed trade are assessable under Schedule D Cases I or II, the normal

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<sup>39</sup> TA 1988 s.681(1) and (4). IT (Entertainers and Sportsmen) Regulations, SI 1987/530 reg 7(2)(c)(ii).

<sup>40</sup> TA 1988 s.670. IT (Entertainers and Sportsmen) Regulations, SI 1987/530 reg 7(2)(c)(ii).

<sup>41</sup> IT (Entertainers and Sportsmen) Regulations, SI 1987/530 reg 7(2)(d).

<sup>42</sup> *Crossland v Hawkins* (1961) 39 TC 493; *Mills v IRC* [1974] STC 130.

<sup>43</sup> TA 1988 s.417(3). IT (Entertainers and Sportsmen) Regulations, SI 1987/530 reg 2(1). D3.104.

<sup>44</sup> TA 1988 s.839. IT (Entertainers and Sportsmen) Regulations, SI 1987/530 reg 2(2). A1.157, C1.424.

<sup>45</sup> TA 1988 s.556(2).

computation rules being applied so that the amount of profits charged to tax in respect of the payment is just and reasonable<sup>46</sup>. A deduction is allowed for the just and reasonable expenses incurred in relation to the payment by the third party and others, as well as for the deductible expenses incurred directly by the entertainer<sup>47</sup>.

It is common practice for entertainers to be employed by companies which they control and in the case of a non-resident it is likely that the company would also be resident outside the UK for tax purposes. In such cases, a payment to the non-resident company would be treated for tax purposes as if it were a payment direct to the non-resident entertainer in respect of his deemed UK trade and in respect of which the entertainer would be charged to tax under Schedule D Cases I or II on the profits or gains arising from payments made to the non-resident company<sup>48</sup>.

### **Reduced Withholding Tax Arrangements**

It is appreciated that the deduction of tax at source at the basic rate from all payments would be grossly unfair to an entertainer or sportsman appearing in the UK where the costs of his appearance are substantial, for example a pop concert with elaborate lighting and sound effects. The amount withheld might not only exceed the entertainer's ultimate tax liability by a considerable amount, it could make a proposed visit commercially impossible and there are therefore detailed provisions allowing a reduced or nil rate of tax to be withheld by arrangement with the Foreign Entertainers Unit<sup>49</sup>.

In order for a reduced withholding arrangement to be made, the entertainer or intended recipient of the connected payment or transfer must make an application in writing to the Foreign Entertainers Unit, not later than 30 days before the payment or transfer is due, that it should be subject to a reduced tax

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<sup>46</sup> IT (Entertainers and Sportsmen) Regulations, SI 1987/530 reg 8(1).

<sup>47</sup> IT (Entertainers and Sportsmen) Regulations, SI 1987/530 reg 8(2).

<sup>48</sup> TA 1988 s.556(2)(b).

<sup>49</sup> IT (Entertainers and Sportsmen) Regulations, SI 1987/530 reg 4(4) to (6).  
Revenue publication FEU50 para B6.

payment<sup>50</sup>. Unless a reduced withholding arrangement is in force, tax has to be deducted at the basic rate<sup>51</sup>.

An arrangement with the Foreign Entertainers Unit must be in writing, between the Unit and the person by whom the connected payment or connected transfer is made, the entertainer, or the recipient of the connected payment or connected transfer<sup>52</sup>. The reduced tax payment may be arrived at either by reference to a percentage of the payment or transfer or as a lump sum which could be nil<sup>53</sup>.

In making a reduced withholding tax arrangement, the Revenue aim to secure that the tax payment shall, as nearly as may be, equate with the entertainer's or recipient's ultimate UK tax liability including higher rates and Schedule E liabilities as an employee, etc.<sup>54</sup> Although the Foreign Entertainers Unit is empowered to take into account that tax has been secured satisfactorily by means of a guarantee or otherwise<sup>55</sup>, they will usually insist on collecting cash equivalent to the anticipated tax liability.

In practice, the application for the reduced withholding tax arrangement is made by the entertainer's tax advisers in the UK, or by the promoter on the entertainer's behalf, by providing the Foreign Entertainers Unit with the information needed to decide whether or not to agree to an arrangement. This includes:

- a) dates of arrival in and departure from the UK,
- b) whether the entertainer is likely to return to the UK again before the next 5th April,
- c) a projection of income with details of dates and venues,

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<sup>50</sup> IT (Entertainers and Sportsmen) Regulations, SI 1987/530 reg 5(1).

<sup>51</sup> IT (Entertainers and Sportsmen) Regulations, SI 1987/530 reg 5(2).

<sup>52</sup> IT (Entertainers and Sportsmen) Regulations, SI 1987/530 reg 4(4).

<sup>53</sup> IT (Entertainers and Sportsmen) Regulations, SI 1987/530 reg 4(5).

<sup>54</sup> IT (Entertainers and Sportsmen) Regulations, SI 1987/530 reg 4(6)(a).

<sup>55</sup> IT (Entertainers and Sportsmen) Regulations, SI 1987/530 reg 4(6)(b).

- d) an itemised projection of the expenses which will be incurred, and
- e) a copy of any contracts covering appearances.

The application should have sufficient information to show how figures have been arrived at, including the basis for any estimates and how expenditure common to several countries has been apportioned.

In making the arrangement the Revenue will make allowance for admissible expenses allowable under the general rules applicable to Schedule D Cases I and II on the facts of each case<sup>56</sup>.

Normally, allowances will be made for:

- a) general subsistence expenses,
- b) commission and manager's and agent's fees,
- c) UK travelling, and
- d) international air fares to and from the UK where an artiste comes to the UK for an activity and returns directly to his or her home country.

Other expenses may be allowable. What is allowable in each case will need to be agreed with the Foreign Entertainers Unit, including the proportion of any costs common to several countries<sup>57</sup>.

An application for a reduced withholding tax arrangement that does not give the necessary details is regarded merely as an advance notification application but does not constitute the application itself<sup>58</sup>. Application for a reduced withholding tax arrangement may be made on form FEU8.

Organisers of major sporting events usually enter into a global arrangement with the Foreign Entertainers Unit under which expenses of a certain amount are agreed for each participant, usually a daily allowance, and the balance is subject to withholding at the basic rate of 25%. It is not normally practical to

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<sup>56</sup> TA 1988 ss. 74 to 90.

<sup>57</sup> Revenue publication FEU50, para B7.

<sup>58</sup> Revenue publication FEU50, para B6.

submit individual reduced tax arrangement claims for each player during the year because prize money will depend on performance and sponsorship or endorsement fees may depend on year end "ranking bonuses" not known at the time of the UK tournament. Full accounts for the fiscal year figures of UK taxable income would be submitted following the year end and any under, deduction or over, deduction paid or repaid so that credit could be claimed in the sportsman's country of residence.

### Example

Boris Petersen is a Danish pop star who is on a tour as a sole performer around the world. He is particularly popular in the UK and USA.

He is proposing a trip to include the UK and consideration is given to structuring the visit. He is resident in Denmark for tax purposes and is sponsored by Polikarpov Inc. Nieman plc has agreed a fee for endorsement.

It is considered that there is no advantage to be gained by employing him through a UK or overseas company for his trip to the UK as he will be taxed on his worldwide income in Denmark and would receive a credit for the UK tax suffered. His manager prepared an application for reduced tax payment (FEU 8) and the following budget:

	£	Expected date of payment
Income:		
Bartini Ltd. Performance fee (one night)	4,500	24/7
Krylov Ltd. "Rock Review"		
appearance fee	5,000	31/7
air tickets £2,500 x $\frac{100}{75}$		
(B.Petersen and spouse)	3,333	15/7
overage <sup>59</sup>	not known	30/9
expense allowance	1,867	31/7

<sup>59</sup> Overage is Boris Petersen's share of the ticket receipts over the budgeted figure of £100,000, i.e., say, 85% of net receipts in excess of this figure.

Endorsement fees:

Polikarpov Inc.

24 anticipated performances in 1993/94 $2/24 \times \$100,000$		
\$8,333 - converted at \$1.7 to £1	4,902	30/9

Nieman plc

F Fr 20,000 converted at F Fr 10.56 to £1	1,894	30/9
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Appearance fees

TV-1	250	28/7
TV-2	250	29/7
Radio	100	28/7
Dinner	600	20/7

Merchandising

anticipated royalties £10,000 @ 5%	<u>500</u>	31/12
	<u>23,196</u>	

Expenses:-

manager's commission	4,105
accountancy fees	1,000
cleaning and replacement of professional clothes	220
hire of rehearsal hall	180
session musician fees	750
gratuities	50
hairdressing	60
insurance of instruments	75
voice training	125
postage and stationery	20
professional journals	15
publicity	300
secretarial assistance	150
subscriptions	25
hotels and subsistence	3,500
air tickets (B.Petersen)	
£1,250 x $\frac{100}{75}$	1,667

pre tour expenses		
2/24 x £12,000		1,000
telephone		135
tickets for agent, manager, etc.		150
taxis		400
car hire and travel		<u>75</u>
		<u>14,002</u>
Net receipts		<u>£9,194</u>

This budget is agreed with the Foreign Entertainers Unit. Note that where transfers of assets such as tickets have been grossed up as receipts, it is also necessary to gross up any allowable element to prevent double counting. Boris, being a resident of Denmark, is not entitled to any personal allowances and tax will be due as follows:

	£	£
First	2,500 @ 20%	500.00
Next	<u>6,694 @ 25%</u>	<u>1,673.50</u>
	<u>9,194</u>	<u>2,173.50</u>

This can be collected entirely from the "Rock Review" promoter as it is less than £10,200 (£5,000 + £3,333 + £1,867) @ 25% (£2,550).

The Foreign Entertainers Unit will therefore issue nil deduction forms FEU 4 to all parties other than the "Rock Review" promoter and require the promoter, on form FEU 4, to withhold £2,173.50 and 25% on 80% of any additional payments, in cash or kind, such as overage, in excess of £10,200. The 80% figure takes into account the manager's fees of 20% on the overage.

If the Foreign Entertainers Unit approves the reduced withholding tax arrangement it will confirm it in writing to the applicant and issue a form FEU 4 which is the payer's notification that basic rate withholding tax is not appropriate. This will identify the artiste's name, stage name, payee's name and address, venues, numbers of appearances, dates of appearances and provide for an amount or rate of tax to be withheld, or if gross receipts or payments to the payee are more than a specified sum, deduction of tax on the excess at an appropriate rate. Without a form FEU 4 the payer must deduct tax at the basic rate from the gross payments made<sup>60</sup>.

<sup>60</sup> IT (Entertainers and Sportsmen) Regulations, SI 1987/530 reg 5(2). Revenue publication FEU50, para B8.

The deduction of a nil rate of tax may be authorised to be deducted, for example where an entertainer has undertaken to pay the anticipated UK tax liability in advance or the tax has been secured by a bank guarantee or is covered by expenses<sup>61</sup>.

In many cases there will be a payment chain, for example money for a concert may be collected by the concert hall owner and accounted for to the promoter who in turn will account to the artiste. The withholding tax rules apply to every person in the chain in the absence of a written arrangement and authorisation on form FEU 4 to deduct a nil or reduced rate of tax.

In such cases, a promoter may make a middleman application under which the concert hall proprietor will be authorised to make a nil tax deduction on payment to the promoter and the promoter will be authorised to take account of allowable expenses and deduct tax at less than the basic rate on payment to the artiste<sup>62</sup>. In practice, middleman applications are often made with respect to peripheral income such as merchandising royalties and appearance fees incidental to the main performance. A middleman application could be made by the promoter who deducts tax from payments to the entertainer but wishes to ensure that he receives the full income without deduction further downstream, to avoid the claim problems of deduction on payments by the box office, etc., to him.

The deduction at source rules are merely a means of collecting tax and the ultimate charge to tax is by reference to the deemed trade carried on in the UK<sup>63</sup>. As the object of the arrangement is to arrive as closely as possible to the final tax liability<sup>64</sup>, the amount of tax to be collected will be equated with the entertainer's final liability at lower, basic and higher rates, taking into account any allowances or losses available for relief.

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<sup>61</sup> Revenue publication FEU50, para B7.

<sup>62</sup> Revenue publication FEU50, para B11.

<sup>63</sup> TA 1988 s.557.

<sup>64</sup> IT (Entertainers and Sportsmen) Regulations, SI 1987/530 reg 4(6)(a).