Pearle* statement

on a fairer tax treatment of cross-border activities by live performance organisations and artists

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The members of Pearle* have adopted at their 49th General Assembly which took place on 12 and 13 June 2015 in Hamburg, Germany a statement reinforcing its call to abolish excessive and double taxation.

The Juncker Commission has made a pledge to improve the functioning of the internal market such as in direct taxation. At the same time priority is given to better regulation and a deepening of the Economic and monetary Union in order to create the conditions for jobs, growth and investment.

By tackling cross-border double taxation, the EU can with small efforts create a leveraging effect for live performance organisations and companies and individual performing artists.

The 2014 OECD update of the Model tax convention and more precisely the Commentary on Art. 17 for performing artists and sportspeople provides a number of options which allow the EU to give the Live performance sector a fairer and similar treatment as other companies, employees and self-employed persons who undertake cross-border activities.

A majority of live performance organisations are SMEs, including micro-enterprises, and the artists employed earn average wages negotiated in collective agreements, such as it is common practice in other sectors. Due to the fact that nearly all EU member states apply article 17, these very often have excessive taxation, because the tax credit is lower than the foreign tax, while groups, orchestras, teams, ensembles and troupes mostly experience double taxation because the tax credit cannot be applied by the group and the individual performers.

This is an obstacle for cross-border work within the EU.

As a general principle, such as Pearle* has stated in the past, the best option to achieve the goal of being treated in the same way, would be to remove Art. 17 of the bilateral tax treaties between EU Members States.

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When it is evident that the artists reside in one of the EU Member States, which can be confirmed by the tax authorities in the residence state, the risk of tax avoidance and non-compliance will not be bigger than for other taxpayers. Returning to the normal rules for companies, self-employed (Art. 7) and employees (Art. 15) would remove a major obstacle for artists who perform in other states. It would stimulate the cultural exchange and diversity such as endorsed in article 167 TFEU, it would take into account social aspects and contribute to growth.

Moreover it would reduce administration costs for governments, as it would allow to focus on main areas of tax evasion or tax fraud only.

When Art. 17 for performing artists is maintained, other options can restrict some of the problems that follow from this source taxation.

The OECD gives the following options in its latest 2014 Commentary on Art. 17:

(a) exclude employees and let Art. 15 prevail over Art. 17

(b) insert a de-minim-amount equivalent to 15 000 EUR[1] expressed in the currency of the other state, for individual artists and sportspersons per year per country

(c) allow the deduction of expenses specifically in tax treaties

(d) exclude performances which are supported by public funds from Art. 17

(e) exclude recognized cultural and sports non-profit organisations and exchanges from Art. 17

(f) exclude payments to third parties in treaty states, when the artists or sportsperson are not owners or shareholders of that third party and do not received bonuses or profit shares

(g) exclude cross-border competitions from Art. 17

With these options a new text for Art. 17 will be created, which would take away many problems for performing artists.

Pearle would like to add to option (c) that the proof of deduction of expenses can immediately be taken into consideration instead of to be done afterwards.

[1] OECD : 15 000 IMF Special Drawing Rights

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Conclusion

Pearle* therefore calls upon the European Commission, without any further delay, to recommend these available options from the 2014 OECD Commentary on Art. 17 to the Member States.

Pearle* calls upon the Member States to apply the options from the 2014 OECD Commentary on Art. 17 in all its double tax treaties.

A model of the text for a new Art. 17 is attached to the statement.

Pearle*-Live Performance Europe, is celebrating its 25th anniversary this year. It represents through its members the interests of more than 7000 theatres, theatre production companies, orchestras and music ensembles, opera houses, ballet and dance companies, festivals, producers, comedy, variété, circus and other organisations.

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ANNEX

Article 17 - Entertainers and Sportspersons

(with all options from 2014 Update of OECD Model Tax Convention)

1. Notwithstanding the provisions of Article 7, but subject to the provisions of Article 15, 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 a sportsperson, from his personal activities as such exercised in the other Contracting State, may be taxed in that other State, unless when the gross amount of such income derived by that resident from these activities exercised during a taxation year of the other Contracting State does not exceed EUR 15 000[2] or the equivalent expressed in the currency of that other State at the beginning of that taxation year.

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 himself but to another person, that income may, notwithstanding the provisions of Article 7, be taxed in the Contracting State in which the activities of the entertainer or sportsman are exercised, unless when the entertainer or sportsperson establishes that neither he, nor any person associated with him or related to him, participates directly or indirectly in the profits of the person referred to in that paragraph.

3. The provisions of paragraphs 1 and 2 shall not apply to income derived from activities performed in a Contracting State by entertainers or sportspersons if the visit to that State is wholly or mainly supported by public funds of one or both of the Contracting States or political subdivisions or local authorities thereof, or when the person which receives the income for the performing entertainers or sportspersons is a non-profit organizations or when the activities take place as part of a cultural or sports program, if this non-profit organization or cultural or sports program is recognized by the Contracting States in a mutual agreement procedure. In these cases, the income is taxable only in the Contracting State in which the entertainer or the sportsperson is a resident.

4. Where a resident of a Contracting State derives income referred to in paragraph 1 or 2 and such income is taxable in the other Contracting State on a gross basis, that person may, be-fore the activities take place or afterwards within three years after the taxable year in which the activities have taken place, request the other State in writing that the income be taxable on a net basis in that other State. Such request shall be allowed by that other State. In determining the taxable income of such resident in the other State, there shall be allowed as deductions those expenses deductible under the domestic laws of the other State which are incurred for the purposes of the activities exercised in the other State and which are available to a resident of the other State exercising the same or similar activities under the same or similar conditions.

5. The provisions of Article 17 shall not apply to income derived by a resident of a Contracting State in respect of personal activities of an individual exercised in the other Contracting State as a sportsperson member of a team of the first-mentioned State that takes part in a match organised in the other State by a league to which that team belongs.

[2] 15 000 IMF Special Drawing Rights

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