

EXTRAIT TAX AND SOCIAL SECURITY

a basic guide for artists and cultural operators in Europe

AN IETM PUBLICATION

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1. INTRODUCTION

Mobility is a fundamental aspect of working life for many artists and cultural operators in Europe. When an arts professional is employed outside their country of residence, whether for a short or long period, they are generally subject to the tax legislation of the country where they go to work. This can be a confusing business. Tax and social security are complex issues which are organised in very different ways from one country to another. Legislation changes frequently so it is important to get up-to-date advice. You may even find that the rules are applied or interpreted differently within the same country.

This basic guide has been prepared to help artists and arts professionals understand better the main issues that affect how and what they are paid when they work abroad in Europe. It is written in straightforward language and seeks to demystify some of the jargon.

The guide does not aim to provide a complete list of all the tax regulations currently in force for any arts professional from any country working anywhere in Europe. Such a document would be extremely long, very technical and instantly out-of-date. Rather, it provides links to sources of up-to-date information, some written for the cultural sector and other more general websites. It describes the current situation for a number of European countries and features *Real Life Stories*, presenting ways in which arts companies and promoters actually operate.

2. WHO IS THIS GUIDE FOR?

This guide has been written for artists and arts professionals in Europe. It addresses artists in all arts disciplines although much of the research has concentrated on the experience of performing arts practitioners and promoters. The guide is intended for artists from across Europe, even though the examples quoted do not deal with every individual country.

The information will be most useful for individuals and companies starting to work internationally or those going to work in a particular country for the first time. It is also intended for arts organisations receiving artists from abroad. In general, it will assist cultural practitioners to understand better the tax and social security implications of working abroad.

If you are responsible for managing international artists, IAMA (International Artist Managers' Association) provides international tax advice for its members from accountants Baker Tilly International. A short 'Tax Guide for Non Resident Entertainers' is useful reading for all artists and cultural operators working abroad and is available on the IAMA website www.iamaworld.com/taxguide/nonresen.htm. Country summaries detailing the tax, VAT and social security implications of performing abroad are accessible to members only.

3. THREE BASIC PRINCIPLES

Research indicates three principles which experienced arts professionals adopt:

1. **DON'T ASSUME** that tax and social security will be organised in the same way as in your own country.
2. **USE YOUR NETWORKING SKILLS** to get advice from colleagues with experience of working in the particular country or professional context you are going to.
3. **ALWAYS CHECK** that you have the most up-to-date information.

4. YOUR STATUS: THREE ESSENTIAL ELEMENTS

How you will be treated under the tax regime of the country where you work is affected by three factors:

4.1 Resident or non-resident?

If you normally live and work in one country but travel temporarily to another to work (e.g. as a dancer on tour) you will be treated as a non-resident under the tax legislation of the second country. A non-resident may also be described as a 'short-term visitor'. Each country provides its own definition of residency for tax purposes. In Sweden, for example, you can work for up to six months as a non-resident while in other European countries it may be anything from three to twelve months. To be considered as a non-resident taxpayer, you may be required to provide your overseas employer with evidence that you are registered as a taxpayer in your country, e.g. a tax number, VAT number or the widely used E101 form (see 5.3). There may be a statement in your contract to confirm that you are responsible for paying tax to the authorities in your own country on income earned in another country.

Non-resident tax status doesn't mean that you pay no tax. On the contrary, you are normally liable to pay tax on any income you earn in that country but it is calculated on a different basis from a resident taxpayer. You should not be taxed at a higher rate than a resident taxpayer. The situation varies considerably from one country to another with widely differing tax rates and exemptions granted in some cases. In addition, there may be tax-free allowances for some expenses which, again, are different according to the country's tax legislation. The lack of consistency in the way the rules are applied from one country to another and even within the same country make it all the more important to work with an experienced local arts promoter who knows how the system works.

Obviously, if you go to another country and settle there you will be considered resident for tax purposes after a period of time. You will then be treated like all other residents of the country. If you are thinking of going to work for a longer period in another EU country, check out the tax regulations and other formalities for working there on the Europa Citizens Dialogue website <http://citizens.eu.int/>. Another source of practical information which also includes the European Economic Area and Switzerland is the EURES Job Mobility Portal on <http://europa.eu.int/eures/main.jsp?acro=lw&lang=en&catId=490&parentId=0> (see 'Living and Working'). Tax and social security systems have many particularities which can seem peculiar if you are used to the regime in your own country. In some European countries the church can levy income tax and in others special local or federal taxes are deducted.

Don't confuse residency for tax purposes with the immigration-related 'right of residence'. They are not the same thing. Most European countries have national laws requiring you to register as a resident if you go to live and work there and different conditions apply depending on the country (see <http://citizens.eu.int/> for EU countries). This means that you could go to another country to work for a few months, register as a resident and be issued with a residence permit but still be considered a non-resident for tax purposes.

4.2 What work are you doing?

The type of work you undertake while you are in another country can also affect the basis on which you are taxed.

Around the world there are international tax treaties established between countries to avoid the double taxation of people who live in one country and work in another. Within Europe, double tax treaties exist between many countries to facilitate international business and cross-border trade. However, some professions are exempted from these rules and this is the case for certain sectors of the arts and entertainment business. Under this legislation, even if there is a double taxation agreement, a country can impose a 'non-resident artist withholding tax' on particular arts professionals when they go to perform in another country. Withholding tax is described more fully under 6.1 below.

The arts professionals covered by this tax are described in the OECD (Organisation for Economic Co-operation and Development) Model Convention on Double Taxation, Article 17, Artistes and Sportsmen (full text on http://www.fifost.org/allgemein/divers/oecd_tax_2003/node22.php).

This specifies that "an entertainer, such as a theatre, motion picture, radio or television artiste, or a musician" can be taxed and grants the right of taxation to the authorities in the country where a performance or artistic event takes place. It should be noted that the OECD Model Convention was originally intended to make sure countries could recoup tax from the earnings of international superstars on tour but it does also include performing artists operating in the non-commercial sector.

In practice, this means that an interpretive artist such as a dancer, singer, actor, performer or musician is covered by the Convention and will normally be subject to withholding tax when they work abroad as a non-resident artist. However, this is not the case for arts professionals who do not appear on stage such as theatre directors, choreographers, technicians, stage crew, administrative and support staff. Equally, it does not apply to artists in other disciplines unless their activity involves an element of public performance. There may be areas open to interpretation - a poetry reading could be described as a performance, as could master classes, seminars and demonstrations in any arts discipline. Research has pointed up several contradictions, e.g. artists teaching workshops – in Germany the tax authorities may give an exemption, in Portugal and Italy they are usually taxable, in Finland they are taxed at a higher rate than artists performing on stage.

A promoter with experience of working with artists from abroad will know best what level of detail is required for their own tax authorities. Good communication in drawing up the contract is essential. The best advice is to specify the work of each person. With a performing arts company, the local promoter should be able to get withholding tax exemption for group members who do not appear on stage. If a company is hired to give both performances and workshops, you may need to state what percentage of the fee is allocated to each area of work.

If you go and work in another country on a more permanent basis you will come under the general tax and social security systems. Again, you can expect to encounter aspects which are entirely different from those you are accustomed to. Apart from the general tax regime, many countries have specific tax and social security systems applicable to professional artists and you will need to investigate the benefits of these. Each country has a different way of defining an artist's status and you'll need to find out if you are eligible.

www.culturalpolicies.net is a useful website realised by the Council of Europe and ERICarts presenting the cultural policies of most European countries. You can compare the social and economic frameworks which apply to freelance artists in numerous countries. Go to 'Comparisons', 'Comparative Tables' and select 'Frameworks for Freelance Artists' or consult the legal frameworks and social security sections (Chapter 5) under each country profile.

A research report by the Arts Council of England ('Artists, taxes and benefits: an international review', Clare McAndrew, 2002) gives full case studies for Denmark, Germany, Ireland, The Netherlands and United Kingdom as well as Canada and Australia on www.artscouncil.org.uk/documents/publications/316.doc.

Another relevant document 'Defining Artists for Tax and Benefit Purposes' is produced by IFACCA (International Federation of Arts Councils and Culture Agencies) – D'Art 1, 2002 on <http://www.ifacca.org/files/Definitionartistanalysis.pdf>.

4.3 Employment status: self-employed or employee?

There are two distinct ways in which an individual's employment status is defined: as self-employed (also described as freelance or independent) and as an employee. Some European countries have intermediary and specialist status definitions for artists reflecting their particular work patterns. Nevertheless the distinction between self-employed and employee is generally recognised. The self-employed artist is paid gross and is responsible for paying their own taxes and social security costs while an employee is paid net with the tax and social security costs deducted at source.

Within the cultural sector, particularly in the performing arts, groups and some individuals may operate under a company structure and be set up in a similar way to a small business. Here, the company charges fees and is responsible for paying its own taxes and the social security costs of its employees. Other companies have a hybrid structure with some permanent employees and others on self-employed contracts.

You might imagine that your employment status in your own country would accompany you when you work abroad on a temporary basis. However the OECD Convention can override this and require the payment of withholding tax by performers described above (4.2). Other arts professionals may find that they cannot provide sufficient evidence that they will pay tax in their own country and national income tax is imposed. It is therefore relatively common for a self-employed artist or arts professional to be treated as an employee when they work abroad. National tax authorities are alert to the possibility of tax evasion and different mechanisms are in place to ensure that they can recoup tax from mobile workers. Indeed, some tax regimes, such as in France, assume that all non-resident artists are employees and this can make it more difficult to negotiate an exemption.

For all these reasons, providing adequate confirmation of your status as a self-employed arts professional or as a bona fide arts company can be vital when you work abroad. If your overseas employer has experience

of employing artists from abroad, they will know what the tax authorities require. This may be an E101 form (see 5.3), national tax number, VAT registration number, company registration number, official company invoice or other document.

5. EUROPEAN COMMUNITY LAW

5.1 Free Movement Rights

Artists and arts professionals who are citizens of the European Union have Free Movement Rights within Member States. These incorporate the right to travel, the right of residence, the right to work and certain social rights. Further information on these rights can be found on <http://europa.eu.int/citizensrights> . ECAS, the European Citizen Action Service, has produced a guide to these rights and is actively involved in defending European Free Movement Rights through its Solidarity Fund and information hotline <http://www.ecas.org/FreeMovementRights/2367/default.aspx?id=624&pg=638>

5.2 Social Security Rights

Within the EU, social security for artists, as for other citizens, is governed by Regulation (EEC) No 1408/71, with an extension of provisions through Regulation (EC) No 859/2003. This lays down the principles designed to protect the social security rights of people moving within the Community but does not affect Member States' freedom to decide what benefits and conditions are provided under their own legislation. This means that national social security schemes vary considerably from one country to another, ranging from a high level of protection (often reflected in higher costs for both employer and employee) to a relatively low level of protection, usually accompanied by lower taxes and a greater reliance on privately funded

The EU rules apply to employed and self-employed people who are nationals of an EU Member State and their families moving within the Community. There are four fundamental principles:

1. Equality of treatment guarantees that you will have the same rights and obligations as nationals of the country to which you are moving.
2. In principle you are insured in one Member State only. This is generally the country in which you carry out your professional activity although there are exceptions for people working temporarily in another Member State for whom the legislation of the country of origin may still apply.
3. Periods of work insured by social security payments in one Member State are taken into account in establishing entitlement to a benefit in another Member State.
4. Benefits can be exported to all Member States. This means that you can work in one country and receive your pension in another.

There are special regulations for cross-border workers who live in one country but work in another, returning home at least once a week.

As a person entitled to sickness benefits and treatments in your own country, you have the right to obtain emergency medical treatment while you are abroad under the same conditions as the residents of that country, as long as you carry proof of insurance under your own social security system.

Your rights are explained in detail in the European Commission's publication 'The Community provisions on social security – your rights when moving within the European Union' downloadable in many languages at http://europa.eu.int/comm/employment_social/soc-prot/schemes/index_en.htm .

Residents of the accession countries joining the EU in 2004 will find that transitional arrangements exist, different for each Member State, setting out their access to social security benefits when working abroad. For these countries and many others bilateral agreements are already in place ensuring reciprocal arrangements.