

Tax and Social Security

a basic guide for artists and cultural operators in Europe

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IETM, international network for contemporary performing arts, is a membership organisation which exists to stimulate the quality, development and contexts of contemporary performing arts in a global environment, by initiating and facilitating professional networking and communication, the dynamic exchange of information, know-how transfer and presentations of examples of good practice



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Tax and Social Security: a basic guide for artists and cultural operators in Europe

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The information and advice provided in this guide have been researched from various sources and are believed to be accurate. However, tax rates and regulations are subject to frequent change. It is essential to take specific professional advice before any undertaking. The author and publishers cannot be held liable for any inaccuracies.

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Introduction to 2nd Edition

This study was commissioned in 2004 by IETM (international network for contemporary performing arts) for publication on www.on-the-move.org, the web portal for international mobility information and opportunities in the performing arts.

The 1st edition of this study was downloaded over 32.000 times April 2004 – August 2007.

In 2007 the report has been reviewed, updated and substantially re-written. In the three years since it was published there have been a number of important research and advocacy initiatives in this field. Most notably:

- ‘Study on Impediments to Mobility in the EU Live Performance Sector and on Possible Solutions’, Richard Poláček, Editor: Pearle*, 2007, Finnish Theatre Information Centre http://www.on-the-move.org/documents/Pearle_report.pdf
- ‘Mobile.Home’, an EU-funded project and conference focused on issues of international mobility in the performing arts sector. Conference in Helsinki, November 2006. Project led by Finnish Theatre Information Centre with partners: IETM, Pearle*, Goethe-Institut, Visiting Arts & on-the-move.org. http://www.ietm.org/upload/files/2_20070314093342.pdf
- European Year of Workers’ Mobility 2006 http://ec.europa.eu/employment_social/workersmobility_2006/index.cfm
- ‘Mobilité des Artistes et Sécurité Sociale’, ERICarts & Suzanne Capiou, 2006, European Parliament study. <http://www.europarl.europa.eu/EST/download.do?file=13235>
- ‘The Status of Artists in Europe’, ERICarts, Suzanne Capiou, Andreas Johannes Wiesand & contributors, 2006, European Parliament study. <http://www.europarl.europa.eu/EST/download.do?file=13235>
- ‘Taxation of International Performing Artistes’, Dick Molenaar, 2005, IBFD Doctoral Series. http://www.ibfd.org/pdf/o30tipa_contents.pdf (contents list)
- ‘Artiste Taxation and Mobility in the Cultural Sector’, Dick Molenaar, 2005, All Arts Tax Advisers, The Netherlands (report for the Ministry of Education, Culture and Science, The Netherlands). <http://www.on-the-move.org/documents/Artist%20Taxation%20and%20Mobility%20in%20the%20Cultural%20Sector.pdf>
- ‘Artists on the Move’, a conference organised in Rotterdam in October 2004 by SICA under the Dutch EU presidency to discuss obstacles to mobility within the EU, including tax, social security, work permit and visa issues. <http://www.sica.nl/pdf/Reportartistsonthemove2004.pdf>

Information from these studies, conferences and other initiatives has informed the 2nd edition of this study. Readers are advised to consult the above documents, in particular the ‘Study on Impediments to Mobility in the EU Live Performance Sector and on Possible Solutions’ which contains a lot of complementary practical information and valuable case studies.

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.

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 soon 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. 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.

Tax and Social Security presents current legislation and gives more detail for a number of European countries, including *Real Life Stories* which feature ways in which arts companies and promoters actually operate and some of the problems they encounter. Additional case studies can be found in the 'Study Impediments to Mobility in the EU Live Performance Sector and on Possible Solutions'

http://www.on-the-move.org/documents/Pearle_report.pdf

I. Who is this guide for?

This guide has been written principally for artists and arts professionals in Europe. Most of the research has concentrated on the experience of performing arts practitioners and promoters although artists in other disciplines will also find it useful. General legislation is presented, along with specific examples and links to enable artists to research their own particular situation.

The information is for artists and arts professionals who go to work in another country, whether it is for a short period (e.g. a theatre tour or a festival performance) or for a longer period (e.g. a contract with a dance company). The artist or company will be paid by the promoter abroad, usually according to a contract which has been drawn up in advance. Nevertheless, for the inexperienced, and even for the most experienced arts organiser, the payment process may not be straightforward. An artist who is self employed in their own country may find that they have been taxed abroad, or that they have paid into the social insurance system of a country where they do not live and will not receive any benefit. They may not be able to understand the basis on which deductions have been made from their fee. They may find it difficult to communicate with the tax or social security authorities abroad. And even those who have been paid according to the contract may not realise that taxes have been deducted on their behalf, creating an invisible system of excessive taxation in the cultural sector. This guide aims to help artists and arts professionals to understand better the tax and social security systems in different European countries and to be paid correctly, in line with their employment

and residence status.

Much of the information relates to mobility between EU countries. A series of fundamental rights exists when EU citizens go to work in another EU country. These rights are not always widely understood by artists and cultural operators in the performing arts. Another problem is that the rights are not always applied as they should be and cultural workers need to know where to get up to date guidance on their situation.

For artists and arts professionals who are coming from outside the EU to work in Europe in the performing arts, much of the information in this guide is also of relevance. They do, however, need to understand that taxation and social security systems for non-residents are based on high level agreements between countries and regions. In most cases, artists and professionals from outside the EU and European Economic Area will be treated differently for tax and social security purposes from artists coming from those countries.

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 help cultural practitioners to research and 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 'Non Resident Entertainers' is useful reading for all performing artists 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.

II. Three basic principles

Research indicates three principles which arts professionals should adopt:

1. **DON'T ASSUME** that tax and social security will be organised in the same way as in your own country.
2. **DO 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. **DO ALWAYS CHECK** that you have the most up-to-date information.

III. Your status – three essential elements

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

1. Resident or non-resident?

Every country has its own tax system with varying regimes which apply to different workers and situations. One of the most basic of these differences is the way the tax authorities treat a worker who is *resident* in a country and a worker who is *non-resident*, i.e. a person who does not normally live there. There are usually significant differences in the way a resident and a non-resident worker are taxed. Each country makes its own definition of 'residence' for tax purposes. This has nothing to do with nationality, citizenship, immigration, right of residence or work permits in this context.

If you normally live and work in one country but travel temporarily to another country to work for a short period (e.g. a dancer on tour) you will be considered to be *non-resident* under the tax legislation of the second country. A non-resident may also be described as a 'short-term visitor'.

If you plan to work in another country for a longer assignment, you should get advice on this as the residence rules are not harmonised across the EU. 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 home country, e.g. a tax number, VAT number or the widely used E101 form (see IV.3). There may be a clause in your contract to confirm that you are responsible for paying tax to the authorities in your own country on income earned abroad.

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. 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, after a period of time you will be considered *resident* for tax purposes. You will then be taxed 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 on the EURES Job Mobility Portal:

<http://europa.eu.int/eures/main.jsp?acro=lw&lang=en&catId=490&parentId=0>

This gives detailed information for anyone going to live or work in the EU, Norway, Iceland or Switzerland. 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.

Another good reference point for information about living and working in other European countries is the European Researcher's Mobility Portal. This is aimed at the academic community but provides a lot of useful general information on living and working conditions:

http://ec.europa.eu/eracareers/index_en.cfm?11=25

Don't confuse residency for tax purposes with the immigration-related 'right of residence' or with work permits. These are not the same thing. Most European countries have national laws requiring you to register as a resident if you go to live there and to obtain a work permit in order to work there. Different conditions apply depending on the country, where you come from and what you do. 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 and/or a work permit but

still be considered a non-resident for tax purposes.

2. What work are you doing?

The type of work you undertake while you are in another country will also affect the basis on which you are taxed. Performing artists are subject to a special form of taxation when they perform abroad which is different from other professions.

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, bilateral 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 certain arts professionals when they go to perform in another country. Withholding tax is described more fully under V.1 below.

The arts professionals covered by the non-resident artist withholding tax are described in the OECD (Organisation for Economic Co-operation and Development) Model Tax Convention, Article 17, Artistes and Sportsmen: <http://www.oecd.org/dataoecd/50/49/35363840.pdf>

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. The OECD Model was originally intended as anti tax-avoidance measure to prevent highly mobile international superstars who claim to live in tax havens from taking gross self-employed income without any tax deductions and also to prevent artists from not reporting their foreign income in their home country. But a consequence of the legislation and its definitions of artiste and performance is that performing artists operating in the non-commercial sector are also affected by this regulation.

In practice, this means that an interpretive artist such as a dancer, singer, actor, performer or musician is covered by the OECD Model and will normally be subject to withholding tax when they perform abroad as a non-resident artist. Arts professionals who do not appear on stage, such as theatre directors, choreographers, technicians, stage crew, administrative and support staff, are not subject to this tax. They would be taxed according to the normal regime in that country, or be exempted under a bilateral tax treaty. 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 or demonstrations, depending on the context. Research in 2004 (for the 1st edition of this report) pointed up several contradictions, e.g. artists teaching workshops – in Germany the tax authorities may give an exemption while in Portugal and Italy they are usually taxable; in Finland the normal tax rate which applies to teaching work is higher than the withholding tax that applies to artists performing on stage.

A promoter with experience of working with artists from abroad will know best how to deal with 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. Make sure you understand the implications of any work which is exempted from withholding tax – in some countries it can mean that you are taxed at a higher rate, in others it can mean that the fee is

paid gross and you are responsible for tax in your own country.

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 normal tax regime, many countries have specific tax and social security systems applicable to professional artists and you will need to investigate the costs and 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.

Reference:

More information on the tax and social security systems which apply to independent, freelance and self-employed artists and arts professionals across Europe can be found in the IETM study: 'From Pillar to Post' (2004, Judith Staines):

http://www.ietm.org/upload/files/16_20061123164008.pdf

Compendium is a useful website realised by ERICarts and the Council of Europe (www.culturalpolicies.net) which presents the cultural policies of European countries. You can compare the social and economic frameworks which apply to freelance artists in numerous countries. Go to 'Comparisons', 'Legislation and Policy Measures' and select 'Special Income Tax Measures for Artists?'. You can also go to the full contents list at:

www.culturalpolicies.net/web/profiles-structure.php and consult relevant parts of chapter 5.

A research report by the Arts Council of England ('Artists, taxes and benefits: an international review', Clare McAndrew, 2002) provided case studies for Denmark, Germany, Ireland, The Netherlands and United Kingdom as well as Canada and Australia. Users are recommended to cross check this information to make sure it is still current.

www.artscouncil.org.uk/documents/publications/316.doc

Another relevant document 'Defining Artists for Tax and Benefit Purposes' was researched for IFACCA (International Federation of Arts Councils and Culture Agencies) – D'Art 1, 2002:

<http://www.ifacca.org/topics/1>

3. Employment status: self-employed or employee?

There are two ways to define an individual's employment status: as self-employed (also described as freelance or independent) or as an employee. Some European countries have intermediary and specialist status definitions for artists reflecting their particular work patterns (e.g. 'intermittent du spectacle' in France). Nevertheless the distinction between self-employed and employee is the main factor in employment status. A self-employed artist submits invoices for fees, is paid gross and is responsible for paying their own taxes and social security costs. An employee receives a salary which is paid net with the tax and social security costs deducted at source (although in some countries, some or all tax is payable on an annual basis).

Within the cultural sector, particularly in the performing arts, groups and some individuals are established under a company structure. This can either be profit-making, similar to a small business, or non-profit/charitable status. Here, the company charges fees and is responsible for paying its own taxes and the social security costs of its workers. 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. This is not always the case, both for tax and

social security purposes. In the first place, the OECD Model Convention can override your employment status and require the payment of withholding tax by performers as described above (III.2). Secondly, some arts professionals may find that they cannot provide sufficient documentary evidence that they pay tax in their own country and national income tax will be 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 avoidance and different mechanisms are in place to enable them to tax mobile workers. Indeed, some tax regimes, such as in France, have assumed that all non-resident artists are employees and this can make it more difficult to negotiate an exemption.

If you do have to pay income tax or social security on earnings abroad, there are mechanisms (certainly within the European Union) for recovering a full or partial reimbursement. If you believe that the tax was incorrectly deducted - for example, if you are self-employed - it is worth pursuing this with the tax authorities. In some cases you can apply for a reimbursement for many years after the payments have been made.

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 documentary evidence the tax authorities require. This may be an E101 form (see IV.3), national tax number, VAT registration number, company registration number, official company invoice or other document.

IV. European Community law

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, the right to provide services and certain social rights. These rights ensure that EU citizens can work and provide services in another EU country on the same basis as the nationals of that country.

These rights are set out in the Treaty of Rome under 'Free Movement of Persons, Services and Capital' (Title III).

The official text is at: http://europa.eu.int/eur-lex/en/treaties/dat/EC_consol.html

An explanation of what this means in practice can be found on the Your Europe web portal: http://ec.europa.eu/youreurope/nav/en/citizens/working/free-circulation/index.html#2429_1 and: http://ec.europa.eu/youreurope/index_en.html

More information from the European Commission's DG for Employment and Social Affairs: http://ec.europa.eu/employment_social/free_movement/index_en.htm

ECAS, the European Citizen Action Service, has produced a guide to these rights and is actively involved in defending European Free Movement Rights through the ECAS Advice service:

<http://www.ecas.org/%20Free%20Movement%20Rights/2386/default.aspx?id=624&pg=638>

If you have a problem and believe you are not being treated correctly, the European

Commission provides a number of advisory services for EU citizens. If you can't find the information you need or if you experience discrimination or other problems that affect your free movement rights, you can consult the following:

Europa Citizens Signpost Service (CSS): <http://ec.europa.eu/citizensrights/>

The CSS is aimed at EU citizens who encounter problems with mobility in the European Internal Market. It is an advisory service which gives guidance and practical advice on specific problems citizens encounter in the EU and its Internal Market. The service is free. The reply provided by multilingual legal experts is personalised, objective, and quick. The experts clarify the relevant rules. They direct the citizen towards the body which can best help solve the problem. They advise on how to assert the citizen's rights and obtain redress. Replies are given by phone or e-mail in the language requested by the citizen (one of the 20 official languages).

SOLVIT: <http://ec.europa.eu/solvit/index.htm>

SOLVIT is an on-line problem solving network in which EU Member States work together to solve without legal proceedings problems caused by the misapplication of Internal Market law by public authorities. It deals with cross-border problems between a business or a citizen and a national public authority, where there is possible misapplication of EU law. It has helped solve problems of taxation and social security.

2. Social security rights

The EU has coordinated national social security rules in Europe to ensure that a citizen's cover is maintained when they move between all EU countries, Norway, Iceland, Liechtenstein (also known as EEA) and Switzerland.

There is a European coordination framework on the application of social security schemes, governed by Council Regulation (EC) No 1408/71. In January 2006 the Commission began the process of introducing Regulation 883/2004, the modernised and simplified Regulation on the coordination of social security schemes. This legislation is intended to replace 1408/71 and, once implemented, a more effective coordination of social security schemes will be in place.

The current legislation 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 arrangements for healthcare and pensions.

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. Special measures also apply to 'posted' workers who are sent by their organisation to work for a period of time in another EU country.

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 (the European Health Insurance Card – see below).

Residents of accession countries or newly joined EU Member States will find that transitional arrangements exist, setting out their access to social security benefits when working abroad. These can vary from one country to another. Consult the information sources for your particular situation.

Reference:

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://ec.europa.eu/employment_social/social_security_schemes/index_en.htm

EUlisses portal is set up to help you understand how you are protected when you go to work or take up residence or stay temporarily in another country.

<http://ec.europa.eu/eulisses>

MISSOC (The Mutual Information System on Social Protection) is the central information source on social protection legislation of the EU and EEA. You can consult comparative tables on the different aspects of social protection in all countries.

http://ec.europa.eu/employment_social/social_protection/missoc_en.htm

3. E Forms

'E Forms' are standardised forms used throughout the European Union, European Economic Area (Iceland, Norway and Liechtenstein) and Switzerland to speed up the process of communication between social security institutions and to claim social security benefits when you go abroad. They do not apply in other countries.

You obtain the forms from the social security institution of the country where you are insured before you travel abroad. If you are an employee, some E Forms must be applied for by your employer. The addresses for national social security institutions are at:

http://ec.europa.eu/employment_social/social_security_schemes/national_social_security_en.htm

The most widely used E Forms for artists and arts professionals working abroad are:

E101 This form is used by workers posted to another country but who continue to receive their salary in their normal country of residence where they also pay their social insurance contributions. It also covers other situations, e.g. a worker employed by a company in another Member State or a self-employed person working abroad temporarily for a limited period.

Note 1: although E101 is intended to certify that income from work abroad is subject to social security contributions in the person's own country and is therefore exempt from contributions overseas, it seems the form is sometimes interpreted more widely. It may be accepted by arts promoters employing performing arts groups from another European country as proof that the artist is responsible for their own taxes and can be paid on a fee basis.

Note 2: many arts professionals who tour abroad for short periods, often at very short notice (for example as a musician or dancer), have reported that it can be difficult to obtain the E101 in these circumstances. This is described in more detail in: 'Study on Impediments to Mobility in the EU Live Performance Sector and on Possible Solutions', http://www.on-the-move.org/documents/Pearle_report.pdf

Note 3: at the Mobile.Home conference in Helsinki in 2006, participants from Austria reported that the European Health Insurance Card issued to self-employed workers also included an E101 form and that it was not necessary to apply for it on every occasion they worked abroad. It is to be hoped that such electronic systems are introduced to all other EU countries.

E104 Certifies the aggregation of periods of insurance, employment or residence. This can be useful at the end of a longer period of work abroad. You should request it to take back to your own country and present to the social security authorities. The aggregated period of employment may mean that you qualify for social benefits at home.

E301 Certifies periods to be taken into account for the granting of unemployment benefits. This can be useful, as with E104, to provide evidence of work abroad which can qualify towards unemployment benefit in your own country.

European Health Insurance Card is available from the health institution in your own country. The Card certifies that you are eligible for basic medical care and emergency assistance while on a temporary stay in another qualifying country. Some countries provide additional cover above this level on a reciprocal basis. You may need to pay for additional private medical insurance to ensure full cover while you are working abroad. The EHIC replaces the E111, E128 and some other health insurance related E forms.

http://ec.europa.eu/employment_social/healthcard/index_en.htm

There are many other E Forms covering a range of situations. The full range of E Forms is listed under Key Documents at:

http://ec.europa.eu/employment_social/social_security_schemes/docs_en.htm

Artists and arts professionals moving to another country on a more permanent basis or who are working abroad accompanied by children or other family members should investigate this to make sure they take the right forms with them. An artist who works abroad for some time and then returns to their own country should obtain the correct E Form certifying their period of work – this can be used to justify a claim for unemployment or other social benefits.

What you should also consider is that the right to obtain basic and emergency health treatment while you are abroad (with the European Health Insurance Card) may not be adequate cover for all eventualities. For this reason, many arts professionals who go to work abroad

temporarily take out comprehensive medical insurance.

V. Tax

Taxation is the responsibility of the relevant government department in each country. Within the EU there is no standardisation of national systems of income tax and widely divergent rates and processes for calculating taxes are found.

Tax was identified as the most serious obstacle to international mobility in Richard Poláček's study for the Mobile.Home project:

“Difficulties linked to double taxation and value added tax have been quoted unanimously by all live performance organisations interviewed as the most serious difficulties they encounter in their everyday activity when mobile inside the EU.[...] the overall general feeling of the professionals in the sector is that the most mobile sector in the EU is discriminated against when providing services in other EU countries due to specific tax legislation which does not exist for any other ‘mobile’ economic sector in the EU.”

From: ‘Study on Impediments to Mobility in the EU Live Performance Sector and on Possible Solutions’, 2007, Finnish Theatre Information Centre, http://www.on-the-move.org/documents/Pearle_report.pdf

Tax was also one of the main issues reported as an obstacle to mobility in the cultural sector in a study carried out for the European Commission by the Université de Paris X in 2002:

“The persons interviewed were fairly unanimous in their criticism of the extreme diversity in tax legislation in force throughout Europe and which can restrict the mobility of performing artists and their productions in the European Union.”

From: ‘Study on the Mobility and Free Movement of People and Products in the Cultural Sector’, Study No DG EAC/08/00, 2002, http://ec.europa.eu/culture/eac/sources_info/pdf-word/mobility_en.pdf

Research shows that the main areas of taxation which concern artists and cultural operators working abroad are:

- Withholding tax
- Income tax and other direct taxes on earnings
- VAT
- Tax on royalties and copyright payments

Reference:

Baker Tilly International publishes tax guides for countries around the world covering company taxes, personal taxes, social security costs, VAT rates and other taxes. The ‘Guide to Taxes in Europe and the Middle East’ can be downloaded from <http://www.bakertillyinternational.com/Default.aspx?page=1436>

Links for the tax authorities in EU Member states can be found at:

http://ec.europa.eu/taxation_customs/common/links/tax/index_en.htm

Links are provided for the national tax administrations of many more countries under ‘Taxes’ on www.on-the-move.org

1. Withholding tax

As described in III.2 the OECD Model Tax Convention provides for withholding tax to be imposed on non-resident performers working abroad. This tax is also described as 'non-resident artist withholding tax', 'Foreign Entertainers Tax', 'Foreign Tax', 'retención a cuenta' in Spanish and 'retenue à la source' in French. It is applied to both self-employed and employees.

Each country sets its own rate of withholding tax and in Europe this is generally 15-30%. The rate must not be higher than the normal income tax rate for residents. Countries have been able to choose whether to tax the full fee without deducting expenses or to allow the deduction of 'direct' expenses before applying withholding tax on the actual performance fee only. The majority of countries have not allowed deduction of expenses (see below for more information). This situation is likely to change in the future following a judgement by the European Court of Justice which has ordered Germany to allow deduction of direct expenses.

Withholding tax is deducted by the organisers at the time of a performance. If there is a bilateral tax treaty between the country of performance (where the tax is deducted) and your home country, this payment will normally be considered as part of your tax liability for that income. Under a bilateral tax treaty, the artist or live performance company who has already paid withholding tax abroad will receive financial compensation in the form of a tax credit or a tax exemption.

There are various ways of ensuring that you are not taxed twice on the income and you need to consult your tax authorities or accountant. The most important element of avoiding double taxation is to obtain a tax certificate, in your own name, for the foreign earnings. Ask the employer for this before you leave the country and make sure that the certificate states the earnings and the tax. The main problem which performing artists encounter is that the contract and fee may be negotiated by a company and therefore the fee (and tax certificate) will be made over to the company, rather than to the individual performers. If you know that withholding tax will be deducted, try to ensure that this is dealt with in the contract so that individual tax certificates for each performer can be issued. You send the tax certificate to the authorities in your own country when you submit your annual accounts in order to receive a credit for the withholding tax you have already paid.

Some countries permit non-resident artists to file an official tax return in the country where they have worked temporarily. This option is being introduced into EU countries as a result of the Arnoud Gerritse case (see below: European Court of Justice) but is not fully implemented in all Member States. It may benefit you to do this in order to offset expenses against the tax paid. If you do submit a tax return, you may qualify for a refund or you might find that you owe more tax. Filing a tax return in a foreign country is most likely to benefit an artist with a high level of earnings there or one with high expenses against the income earned. If you are in this situation, you will probably need professional advice from an accountant in that country or from your professional association.

Although these are the official tax regulations for non-resident performers, research indicates that withholding tax does not seem to be applied systematically. Exemptions from paying withholding tax are allowed in some countries for some types of performance, e.g. non-profit companies, companies in receipt of public subsidy. Broadly, it appears that some countries (e.g. Finland and Sweden) have a low withholding tax rate and a fairly straightforward system with few exemptions; others (e.g. UK) have a mid-range rate and permit higher tax-free allowances for expenses and/or more frequent exemptions; a third group of countries have relatively high withholding taxes and some exemptions but the system is not always consistent or transparent in how the rules are interpreted.

Local promoters report different ways of gaining exemption for performances by overseas companies. Although the rules for exemptions are entirely different from one country to another, one influencing factor seems to involve proof that the performance is organised within the non-profit sector by companies in receipt of public subsidy. Performances which are part of an official programme of cultural exchange between two countries are also often exempted from withholding tax. You can't rely on these as grounds for exemption in all countries since the rules are so variable.

Also, do not forget that withholding tax is only applied to actual performance fees. The fees for any person involved in the production who does not perform (a director, lighting technician, stage manager etc) or for any part of the contract which is not performance (e.g. education workshops), do not incur withholding tax. Other taxes may apply however, depending on the employment status of the person and the country.

The advice given by experienced promoters in the performing arts has been, wherever possible, to negotiate a fee net of all taxes. A contract should also specify that expenses such as travel, accommodation, freight and per diems are paid net of tax. This means that if withholding taxes are due, it is the responsibility of a local employer to calculate these and include them in their own budget. However, as Richard Poláček points out in the 'Study on Impediments to Mobility in the EU Live Performance Sector and on Possible Solutions' (www.on-the-move.org/documents/Pearle_report.pdf), this can lead to an invisible process of excessive taxation where the local promoter negotiates a net fee with the company and takes care of the withholding tax payments. The performer does not realise that they have paid tax, does not ask for the tax certificate and as a result does not receive a tax credit. The authorities in both countries receive tax on the fees, often because the performers are not experienced enough to understand fully the situation and to know where to get advice.

There are many inequalities in this system and a performing artist may find that their fee and expenses are taxed abroad at 30% and, when they return home, their fee is again taxable in their home country under normal income tax rules. The tax burden seems to fall more heavily on smaller artistic companies and individual artists who are less likely to have access to the specialist services of accountants and international tax lawyers.

Withholding taxes are a complex factor in the mobility of performing artists. A rather hidden aspect of national cultural policy, they can be used as either a carrot or a stick.

Mostly one hears reports of them as a problem, being an obstacle for performers (who may end up being taxed twice) and for promoters (who must budget for much higher costs for foreign artists). Germany is widely cited as a country where withholding taxes are rigorously enforced and few exemptions are permitted. This has been a source of conflict between the Ministries of Finance and Culture in past years. There have been reductions in the withholding tax rate but in 2002 the Deutscher Kulturrat stated that performances by non-resident artists had gone down by 33% in the previous five years because of the tax rules. Italy's withholding tax rate of 30% is applied to fees, expenses and per diems and this high rate has been seen as a disincentive for British orchestras to perform there.

However, where rates are low and exemptions are allowed, withholding taxes can act as an encouragement to employ foreign artists. In Sweden where the rate is 15%, it can cost less for a promoter to employ a foreign artist than a national artist and this has raised debate in the Swedish cultural sector. Finland also has a 15% rate, and Greece has special low tax rates for artists invited by a public authority. But even a low rate creates added administration for

both performer and promoter. Therefore low withholding tax rates should not be seen as a threat by national artists; rather, they are an acknowledgement of the additional costs involved in employing artists from abroad, all of which need to be budgeted for by promoters.

The section on taxation in the 'Study on Impediments to Mobility in the EU Live Performance Sector and on Possible Solutions' concludes that the rules on withholding tax and double taxation across Europe create: "long, burdensome, incoherent and incongruous administrative procedures to avoid double taxation and excessive taxation with uncertain outcomes".

Experiences of artists and promoters are presented in *Real Life Stories* under each Country Profile. Always remember that tax legislation and its enforcement is liable to change on a regular basis and artists should get up-to-date advice from a local arts organisation, promoter, festival, producer or other cultural manager with experience of employing foreign artists. Remember that it is in both your interests to work legally and to avoid unnecessary overpayment of tax.

Withholding tax and expenses

A final and important aspect of withholding taxes is how the tax authorities treat expenses. Some allow the deduction of expenses and others do not.

Research in 2005 by Dick Molenaar in 'Artiste Taxation and Mobility in the Cultural Sector' <http://www.on-the-move.org/documents/Artist%20Taxation%20and%20Mobility%20in%20the%20Cultural%20Sector.pdf> gives a table of the national artiste tax rules (withholding tax rates, deductibility of business expenses etc.). At that time, the large majority of European countries did not allow business expenses to be deducted and withholding tax was levied on the entire performance fee. Only the UK, Netherlands, Norway, Switzerland and Hungary allowed deduction of expenses. However, the fairness of this system was challenged in the European Court of Justice in the Scorpio case in 2006 with regard to the practice in Germany (see below) and a recent ruling may lead to changes in other countries.

Where expenses are allowed, find out in advance how this is organised. The UK has a special tax unit (Foreign Entertainers Unit) which approves budgets of non-resident performing artists, allowing the deduction of some production expenses. Withholding tax of 22% is only applied to the artist's fee.

In some countries, the tax authorities allow deduction of actual ('direct') expenses only against receipts. This can be a problem if you are organising a tour to several venues in the same country and would normally divide expenses between venues, invoicing for a percentage of the overall costs. You will need to sort out with promoters how to present your expenses receipts.

Since the majority of countries apply withholding tax to both fees and expenses, travel and accommodation costs, as well as per diems which are invoiced, will be taxed. In this case it is a good idea to take advice from the promoter at the contract stage. Some promoters prefer to book travel tickets and accommodation, or may offer to pay freight bills direct rather than reimbursing them against invoices and incurring unrecoverable taxes.

Withholding tax: some European exceptions

Research by Dick Molenaar in 2005 found two exceptions in Europe: Denmark and Ireland.

Denmark does not levy a withholding tax from non-resident artistes who perform only

occasionally. This is from a belief that a foreign artist who visits for one or two days uses the country's public facilities too little to make such taxation defensible. Artists who stay longer in the country are taxed on a normal basis. Festivals have to pay a municipal tax to the local community and, if passed onto the artists, this is not part of a bilateral tax treaty and could not therefore be used to gain a tax credit in the home country.

Ireland does not deduct income tax on performance fees of non-resident artists but it has an alternative system for taxing such income, though a VAT rate of 21% on net performance fees. Again, VAT falls outside bilateral tax treaties and cannot therefore be credited in the country of residence. This situation and the resulting additional costs for promoters of arts events are explored as Case Study 12 in the 'Study on Impediments to Mobility in the EU Live Performance Sector and on Possible Solutions'.

European Court of Justice cases

A case was brought to the European Court of Justice in 2003 on International Artist Taxation by Dutch musician, Arnoud Gerritse. He worked in Germany where his earnings were taxed the withholding tax rate of 25% but he was told expenses were not deductible. The Court found he was being treated unfairly as a foreign artist since German artists were allowed to deduct expenses before tax. The European Court of Justice found that Gerritse's treatment by the tax authorities in Germany was in breach of the freedom principles of the European Treaty. As a result all EU Member States now have the obligation to change their legislation for foreign artists to ensure that tax rates and deductions for expenses do not discriminate against artists from other Member States.

Comment on the case <http://www.allarts.nl/artikelen/2003/Gerritse%20-%20decision.pdf>
Full text of European Court of Justice <http://curia.eu.int/jurisp/cgi-bin/gettext.pl?lang=en&num=79969387C19010234&doc=T&ouvert=T&seance=ARRET&where>

The lawyers for the case commented:

"The Arnoud Gerritse Case is a major breakthrough for international artists, but it will need some lobbying in Germany and other European countries to change the tax legislation."

A second case, the 'Scorpio case' (FKP Scorpio Konzertproduktionen GmbH v. Finanzamt Hamburt-Eimsbüttel) was brought in 2006. The judgement means that Germany must allow the deduction of direct expenses at the time of performance and that the withholding tax can only be levied on the net profit (i.e. the performance fee after deduction of expenses). This case also has repercussions for other Member States which do not currently allow the deduction of expenses and will be obliged to change their legislation.

Comment on the case: <http://www.allarts.nl/articles/2006/2006-10-03%20-%20ECJ%20in%20Scorpio.pdf>

To locate the judgement in various EU languages, search the Case Law section of the Court of Justice of the European Communities website: <http://curia.europa.eu/index.htm> (reference: Case C-290/04, Scorpio Konzertproduktionen).

For the latest updates on this case, including a March 2007 press release from the European Commission asking Germany to change its tax rules for non-resident artists, see the News section of All Arts website: <http://www.allarts.nl/en.html>

The Netherlands: a successful campaign against withholding tax

The Netherlands made an early decision in 2001 to allow the deduction of direct expenses on the income of performing artists and, at the time of the 1st edition of this study, was deducting 20% withholding tax on the net fees of non-resident artistes.

However, following research and a successful campaign by the performing arts sector and others, the Dutch government accepted that the tax revenue they gained from withholding tax was not justified by the high administrative burden. On 1st January 2007, it abolished the taxation of non-resident artistes and sportsmen. The new rules only apply to artistes and sportspeople living in countries which have a bilateral tax treaty with the Netherlands. Any income earned abroad by such an artist is therefore only taxable in their home country.

The pioneering example of the Netherlands should be studied by other countries. Withholding tax has a negative effect on the international mobility of artists and its cost-effectiveness has been challenged by the research undertaken by Dutch tax lawyers.

More information:

<http://www.allarts.nl/articles/2006/End%20of%20Artiste%20and%20Sportsman%20Taxation%20in%202007%20-%20AA.pdf>

2. Income tax and other direct taxes on earnings

If you are a self-employed artist or cultural operator going to work abroad on a temporary basis and you are not a performer covered by the OECD Model, you need to investigate whether there is a double taxation agreement between your country and the country where you are going to work. You can get this information from the tax authorities in your own country. If so your employer may be able to pay you without deducting income tax or any tax you have to pay may be credited in your own country.

Within the EU, you can use Form E101 (available from your tax office) to certify that you are either employed or self-employed in your country of residence and pay your social security there. Although intended to certify social security payments, E101 is often accepted as evidence for self-employed people that you pay tax in your own country. This is important since it can help a self-employed arts professional to be paid gross without deduction of taxes. If you are from a non-EU country, you can ask your tax authorities for official confirmation of your employment status.

Some people fall outside this system and are likely to be taxed in the normal way. Young artists, whose tax situation has not yet been formalised, perhaps because they were recently in full-time education, can find themselves treated as employees and taxed. Individuals who cannot provide the E101 or other documentation required to prove that they are genuine tax payers may be subject to national income tax.

A problem sometimes occurs with artists engaged for short periods of work such as dancers or orchestra musicians. If they are recruited at short notice, they may find it difficult to obtain the E101 form in time before they go to work abroad since the employer usually has to apply for it 30 days in advance. One promoter reported that there was a way of getting the form processed more quickly on the internet and in Austria, self-employed performers can get the E101 combined with their European Health Insurance Card, a digital solution which should be the model for other EU countries.

There can be a clash of cultures when a self-employed arts professional from a country with less formal requirements for setting up in business goes to work temporarily in a country with a

more bureaucratic system. Self-employed workers in some European countries can operate on a freelance basis without an office, company structure or separate bank account while in other countries they must be registered as a company and charge VAT. An invoice from a freelance worker with no VAT or company number may not look 'official' enough to satisfy some national tax authorities and may need to be backed up by other documentary proof of employment status.

Artists awarded a residency, bursary, grant or prize can find the payment treated differently according to the tax rules of the country. They should find out from the host organisation whether the bursary will be paid tax-free or whether it will be taxed as a form of earnings. Taxation of prizes and grants is different from one country to another and you may find that if you win a prize abroad, the tax authorities will claim a percentage.

When you come under the tax system of another country, there will be a procedure for issuing you with a tax number there. You should be able to rely on the local employer to know how to deal with these formalities or you can apply to the tax authorities yourself. When you complete your employment, ask for a tax certificate and you may be able to claim a credit or refund on any tax which has been overpaid.

3. Value Added Tax (VAT)

VAT is a complex area of taxation which will affect some artists and companies working abroad. In some countries, all traders (including those working in the cultural sector) must register for VAT, in others there is a threshold or annual turnover above which you must register.

VAT is a tax levied on certain goods and services. It is charged on different goods and services across the European Union and, within any one country, there is a scale of rates according to the type of goods/service. Surveys on VAT rates in the cultural sector have highlighted the variations and complexity surrounding exemptions which exist across the EU. It is not surprising that VAT has been cited as one of the obstacles to mobility for cultural operators and artists.

The situation in Ireland on the introduction of 21% VAT on fees paid to non-resident performers is outlined above and has generated research and campaigning throughout the cultural sector. A campaign in Lithuania managed to convince the government in 2006 to lower the applicable VAT rate for live performances from 18% to 5%, helping Lithuanian venues to receive performing artists from abroad without excessive tax liability.

This guide is not the place to list all the different VAT rates, legislation and implementing rules for foreign traders across Europe. Consult the VAT office in your own country. See also the VAT section in the Taxation and Customs Union department of the Europa web site:

http://ec.europa.eu/taxation_customs/index_en.htm#

An accountant or tax adviser can give you advice based on your particular case.

The following questions may help you decide whether VAT is an issue when you work abroad:

1. *Do you charge VAT on your goods and services in your own country?*

If you are registered for VAT in your own country, you will have a VAT number and an understanding of how the system works when you provide goods and services at home and a mechanism for accounting for VAT. You may need to charge VAT at the normal rate applicable in your own country when you sell your goods and services abroad.

2. *Is VAT chargeable on the services/goods you are supplying in the country abroad?*
Ask the local promoter who should know whether VAT applies and at what rate. Exemptions or lower rates of VAT apply to some cultural goods and services. In Slovenia, for example, VAT is charged on performances and ticket sales at 20% but 'cultural organisations of national significance' are exempt. See Country Profiles (VII.) for other examples.
3. *Who is responsible for accounting for the VAT?*
If you are working for a promoter, organiser or venue abroad, it may be that they take responsibility for accounting for the VAT. This should be clarified at the contract stage as it affects the overall fee. It can be described as a 'tax shift' or a 'VAT shift'. In effect, the promoter takes on the responsibility for selling the product (i.e. the performance) to the public and for charging and accounting for the VAT at the rates applicable in their own country. If this is the case, the overseas promoter provides you with their VAT number and you submit this to the VAT authorities in your own country to justify why you have not charged VAT. Where you are working through an agent it can be more complicated.
4. *Do you need to register for VAT in the country where you work?*
In some countries, you are considered as a foreign trader if you come to work, even on a short-term basis. Several performing arts companies have reported that they were obliged to register for VAT in France when touring there. However, they found the procedure fairly straightforward. Obligatory registration has also been reported for Denmark and Finland. Registering for VAT in another country may be obligatory for any period of work abroad or it can depend on the length of time you work there, the type of goods and services you supply and the overall value of the goods sold (i.e. if you exceed the annual threshold). Since registration also allows you to offset VAT paid on goods you have bought there, it may be of benefit to register if you are spending a long time in a particular country and incurring high expenditure.

One of the most common difficulties reported with VAT is where an artist or live performance company exempted from VAT in their own country goes to perform abroad and has to pay VAT on the fees received there. On return to their own country, the artist or company finds that because they are not registered for VAT, they cannot claim it back from their own authorities. VAT is not a withholding tax and is not covered by bilateral tax treaties. Therefore any payments will not be honoured with a tax credit. Some national regulations oblige mobile artists and companies to register for VAT in the country of performance, setting up an administrative burden which has been seen as a disincentive to mobility.

4. Tax on royalties and copyright payments

Income from royalties and intellectual property rights which has been earned in another country will also normally be subject to tax. In some countries (e.g. Austria) the tax on such income is the same as the withholding tax rate and in others it is taxed at the normal income tax rate. A number of European countries have special tax rates for royalties which are lower than the normal income tax rates. In Italy, there are different rates according to where the work has been created and where it is presented (see VII.).

Tax on royalties and copyright is a specialist area and you will need expert advice if large sums are involved. If you have a high level of income in one country, it may be advantageous to file a tax return there (if this is permitted) so that you can deduct any relevant expenses.

The artists' collecting society in your own country should be able to advise you and in many cases they also collect income earned in other European countries on behalf of members. More information and contacts from GESAC, the European Grouping of Societies of Authors and Composers: <http://www.gesac.org/>

VI. Social Security

The rights of citizens of the European Union, European Economic Area and Switzerland are set out in IV.2. In addition, there are bilateral agreements between some other countries which provide similar reciprocal arrangements.

1. Temporary or short-term work

If you are working abroad on a temporary basis, ensure that you maintain your social insurance payments and protection at home during this period. Get advice from your national social security institution. If you are travelling from and to a country within the European Union, European Economic Area or Switzerland, use form E101 to prove that your social insurance costs are paid in your own country and do not need to be paid again in the country where you work. Make sure you have sufficient cover for healthcare – the European Health Insurance Card only allows for free basic care and emergency treatment and a comprehensive medical insurance policy will cover other eventualities.

Some inconsistencies in the system have been found by cultural practitioners working abroad. Self-employed artists may find that they are treated as employees when they work abroad. This change in status can mean they are obliged to pay social security contributions abroad. Non-resident self-employed artists and companies on short work assignments should try to provide the documentary evidence necessary to avoid making social security payments on fees earned abroad. The rates can be high and it may be impossible to gain any benefit from payments made outside your own country. Tax payments abroad can in some cases be refunded but this is not generally the case with social security payments. See below for details of cases brought to the European Court of Justice.

2. Permanent or long-term work

If you are working abroad on a more permanent basis, you will want to ensure that you have full social insurance protection in the country where you are living and working. If you are moving between European countries covered by the E Form system, ensure you have the relevant documents to certify your periods of work and social insurance in your own country. An important issue which few artists consider is that social security contributions accumulate towards your old age pension. Payments made in another EU country will be taken into consideration, wherever you retire, through the European coordination framework of social security schemes. It is important for this reason to keep all paperwork related to periods of work abroad.

If you go to live and work in a new country there may be special social security arrangements applicable to artists. The Compendium of Cultural Policies in Europe presents legal frameworks and social security provisions for artists in various countries and additional advice

should be sought from national artists' agencies in the country where you go to live and work. See www.culturalpolicies.net Compendium of Cultural Policies in Europe – go to 'Comparisons', 'Comparative Tables' and select 'Frameworks for Freelance Artists' or consult the legal frameworks and social security sections (Chapter 5) for individual countries at: www.culturalpolicies.net/web/profiles-structure.php.

Difficulties of mobility linked to social security was one of the four issues researched for the 'Study on Impediments to Mobility in the EU Live Performance Sector and on Possible Solutions', http://www.on-the-move.org/documents/Pearle_report.pdf which explores some of the "cumbersome and time-consuming procedures" that apply to mobile live performance work in Europe. For example, a British orchestra which needed E101 forms for 40 musicians and had to apply repeatedly for each separate date and country for a short tour of Italy and France. An example of good practice was the Netherlands who only need to receive one E101 form per year for a performing artist, however many times they come to work in the country.

A study was commissioned by the European Parliament in 2006 - 'Mobilité des Artistes et Sécurité Sociale' (in French): <http://www.europarl.europa.eu/EST/download.do?file=13235> The report by ERICarts and Suzanne Capiou outlines the problems of lack of coordination between social security schemes and focuses particularly on the issues of unemployment benefit and old age pensions.

Employment and social protection for arts professionals who work in different countries was also investigated as part of the 'Mobility and free movement of persons and products in the cultural sector' study for the European Commission in 2002

http://europa.eu.int/comm/culture/eac/sources_info/pdf-word/mobility_en.pdf

Researchers found a serious difficulty with loss of entitlement to unemployment benefit and pension payments. There were problems in tracking artists' careers when they have worked abroad and in paying social security benefits due to the lack of co-ordination between national organisations. The European Council of Artists commented on the study in 2002 and highlighted the need "to recognise working periods abroad equal to working periods in the home country". They also recognised the great diversity of national laws on taxation and labour legislation and recommended setting up "a European centre for information and advice to artists crossing borders" – see <http://www.eca.dk/news/studymobility.htm>

If you work abroad for some time and then return to the country where you have previously made social security contributions, always keep a record of the payments made abroad. Your overseas employer should provide you with a tax certificate and the relevant E Forms when you leave. When you get home, you should ask how these payments can be credited or recognised by the social security institution in your own country to ensure continuity of employment and entitlement to unemployment, pensions and healthcare benefits. Qualifying periods of employment abroad certified by the E Form system are translated into periods of work in your own country using an official formula which can result in less working time being credited than has actually been done.

3. European Court of Justice cases

A case was brought to the European Court of Justice in 2000 on rights for self-employed workers by twelve British opera singers and a conductor employed by the Brussels opera house Théâtre Royal de la Monnaie. Normally self-employed in the UK, they worked on temporary contracts in Belgium and continued to pay their social insurance in the UK. Although they could provide the E101 certifying their status as insured self-employed workers in the UK, they were treated as employees by the Belgian authorities and social security

contributions of over 13% of their fees were deducted. The European Court found in their favour and made an order for the contributions to be repaid.

To locate the judgement in various EU languages, search the Case Law section of the Court of Justice of the European Communities website: <http://curia.europa.eu/index.htm> (reference: Case C-178/97, Parties: Banks and Others).

Text in French: <http://www.cleiss.fr/docs/jurisprudence/c178-97.html>

Comment on the case: <http://www.iamaworld.com/news/current/ecj-rights.htm>

In a second relevant case, France was taken to the European Court of Justice by the European Commission for failing to fulfil its obligations under the principle of free movement of workers in the EU. Two issues were cited: the assumption of salaried status ('présomption de salariat'), whereby even self-employed workers with E101 forms were subjected to deductions for social security, and the need for foreign promoters to obtain a French agency licence to work in France. The Court found in favour of the European Commission in 2006, placing a legal obligation on France to amend its practices. The work code is being amended in 2007/08 (see below under France).

To locate the judgement in various EU languages, search the Case Law section of the Court of Justice of the European Communities website: <http://curia.europa.eu/index.htm> (reference: Case C-255/04, Commission of the European Communities v. French Republic).

4. EuroFIA Dance Passport: access to services of unions abroad

The International Federation of Actors (FIA) has launched the EuroFIA Dance Passport which gives dancers and choreographers going to work in another country reciprocal access to services provided by unions to local artists.

The EuroFIA Dance Passport is a reciprocal solidarity service that performers' unions in Europe have agreed to grant to their respective members, assisting them as they temporarily work or seek employment opportunities in another EU member State, in Iceland, Norway and Switzerland. It allows the Passport holder to benefit temporarily from various services offered, at no cost, by the union in the country of destination. All participating unions have undertaken to offer as many services to visiting performers as they can afford – meaning that some may be able to grant more than others. Once you know where you heading to, you should check the FIA site for updates, so you know exactly what the union in your country of destination can do for you.

To qualify, you must be a professional dancer and a member of a national union which is part of the FIA scheme. It is currently limited to dancers and choreographers, as these are most likely to travel abroad than other performers and are often confronted with very specific needs, like daily access to training, medical and insurance information, advice on contracts and other legal matters, information about rehearsals, theatre discounts, etc.

See the FIA website: http://www.fia-actors.com/en/eurofia_dance_passport.html

5. Information sources

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://ec.europa.eu/employment_social/social_security_schemes/index_en.htm

Links to Social Security institutions in European countries covered by Free Movement

regulations: http://ec.europa.eu/employment_social/soc-prot/schemes/webpages_en.htm

Social security benefits under 'Living and Working' on the EURES Job Mobility Portal:
<http://europa.eu.int/eures/main.jsp?acro=lw&lang=en&catId=490&parentId=0>

Eulisses portal is set up to help you understand how you are protected when you go to work or take up residence or stay temporarily in another country.

<http://ec.europa.eu/eulisses>

MISSOC (The Mutual Information System on Social Protection) is the central information source on social protection legislation of the EU and EEA. You can consult comparative tables on the different aspects of social protection in all countries.

http://ec.europa.eu/employment_social/social_protection/missoc_en.htm

If you have a problem with social security when you work abroad, try SOLVIT:

<http://ec.europa.eu/solvit/index.htm>, the EU's on-line problem solving network. It deals with cross-border problems between a business or a citizen and a national public authority, where there is possible misapplication of EU law. It has helped solve problems of taxation and social security.

VII. Country Profiles

The following list of countries presents information on many of the European countries where artists are regularly touring or going to work. Readers with additional relevant experience are invited to contribute it to info@on-the-move.org.

Real Life Stories for each country present the experiences of artists and arts professionals who work there. It is essential to view these comments as anecdotal evidence or snapshots from the cultural sector and not as official procedures which will apply to all. Apart from the obvious differences from one country to another, people within the same country often work in entirely different ways. There are certainly many contradictions, often difficult to understand or explain. *Real Life Stories* illustrate the importance of getting up-to-date advice and working with experienced local arts promoter. These were researched for the 1st edition of this study in 2004. Additional, more up to date case studies can be found in the 2007 'Study on Impediments to Mobility in the EU Live Performance Sector and on Possible Solutions', http://www.on-the-move.org/documents/Pearle_report.pdf

*** Always remember that tax legislation and how the rules are applied in individual circumstances are liable to change and professional advice should be obtained.

Austria

Withholding taxes of 20% are payable by non-resident performers.

Real Life Stories

- A theatre company in Southern Germany used to tour regularly to Austria which is closer than many other places in Germany. However the high rate of withholding tax in Austria is a particular disincentive to both performers and promoters.
- One festival places the responsibility for paying tax on the artists via a clause in their

contracts and pays them without tax deduction.

At the Mobile.Home conference in Helsinki in 2006, participants from Austria reported that the European Health Insurance Card issued to self-employed workers also included an E101 form and that it was not necessary to apply for it on every occasion they worked abroad. It is to be hoped that such electronic systems are introduced to all other EU countries.

Belgium

Withholding tax of 18% is payable by non-resident performers. Expenses are not deductible although there is some scope for negotiation (see below for information on Belgian artists' tax at All Arts). The situation may change in the light of the Scorpio case at the European Court of Justice described above (V.1). There are exemptions for performing arts companies from countries with which Belgium has a tax treaty (e.g. France & Netherlands) but these are only allowed under certain conditions and are dealt with on a case-by-case basis. Other exemptions apply when the performance is financed by a public authority, for example as part of an official cultural exchange programme.

There has been considerable debate within the cultural sector over VAT. There are two VAT rates: a general rate of 21%, a lower rate of 6% and some exemptions. The lower rate (originally intended to apply to 'necessities' of life) applies to most cultural goods such as books but CDs attract the higher rate. The subsidised performing arts sector has been zero-rated but certain activities are now subject to the 6% rate. This is a specialist area and the promoter in Belgium must advise performers coming to work there.

Individual artists (often described as artists "acting as a physical person") are usually taxed on a normal basis unless they provide proof that they pay their tax and social security in another country.

The following sources of information and advice may be useful:

www.vti.be The Flemish Theatre Institute web site provides information on the collective conventions in the performing arts and how they apply to artists coming from abroad, as well as a large range of other resources and information on the Flemish Theatre scene. The links section (www.vti.be/werkinstrumenten/podiumzaken) contains useful work-related contacts.

www.kunstenloket.be The Flemish Community Help Desk, Kunstenloket, informs artists in Belgium and artists coming from abroad about various employment and legal issues. The section 'Kunst over de grenzen' has information on working abroad. Resources in Dutch language only (2007).

<http://www.allarts.nl/en.html> All Arts Tax Advisers: information on Belgian artists' tax and allowable deductions for expenses.

Denmark

According to research in 2005, withholding tax is not levied on the earnings of non-resident artists who perform only occasionally (see V.1 for more details). Performers who only spend one or two days in the country should not be liable to tax in Denmark.

According to an Arts Council of England report in 2002, withholding tax of 25% is payable by non-resident performers who can spend up to six months in the country before coming under the normal tax regime. Income from royalties is taxed at 30% apart from those paid to artists from countries with which Denmark has a double taxation agreement; in which case the tax rate is lower than the normal rate or may be zero. Non-resident artists who are self-employed (or employed by a non-resident employer) will not be subject to taxation in Denmark as there is no internal provision for taxation.

Information on Denmark from research report by the Arts Council of England ('Artists, taxes and benefits: an international review', Clare McAndrew, 2002). Users are recommended to cross check this information to make sure it is still current. www.artscouncil.org.uk/documents/publications/316.doc

Finland

Withholding tax of 15% applies to the earnings of non-resident performers (under the legislation which applies to "sportsmen and artistes"). No deductions may be made for general production expenses but travel and accommodation costs can be reimbursed (against receipts) and a per diem daily allowance can be paid tax free. Performing artists coming from a national company which is owned and financed by the state may be granted a tax-free exemption. The earnings of non-resident teachers and workshop leaders are taxed at 35% which would apply to artists running educational workshops or masterclasses.

Information in English on the tax system in Finland: 'Taxation in Finland' and other documents can be downloaded from the Finnish Tax Administration website: http://www.vero.fi/default.asp?language=ENG&domain=VERO_ENGLISH

Real Life Stories

- Anecdotal evidence from a UK dance promoter: Finnish dancers expect to be paid the per diem rate negotiated by unions in Finland when touring abroad. However, this rate is much higher than the normal UK per diem and is unlikely to be payable within the average UK production budget.
- From a dance festival organiser in Finland: It is important to specify the actual work which a performer will do because of the different tax rates for performance and teaching. Foreign artists are automatically issued with a tax certificate which should allow them to claim a tax credit in their own country and avoid double taxation.
- From a dance promoter in Finland: It can be difficult to negotiate with the tax authorities over the status of national companies from abroad. In practice it can be difficult to get tax-free exemption for performers from national companies.

France

Withholding tax (Retenue à la source sur les prestations artistiques) of 15% applies to non-resident performers. Bilateral tax treaties are in place with some countries which exempt artists from withholding tax.

There is a considerable amount of specialist information available on the internet and from national resource centres in France, both for French artists who want to work abroad and for artists going to work in France. The Centre National de la Danse (www.cnd.fr), through its Département des Métiers, and the Centre National du Théâtre (www.cnt.asso.fr), through its Informations Juridiques, provide specialist legal services for dance and theatre professionals

in France and information for those coming to work there from abroad.

Artistes-etrangers (www.artistes-etrangers.eu) provides information in French and English on hosting foreign artists in France. This website is designed to keep both employers and foreign artists informed about the legislation, rights and obligations currently in force. It enables foreign artists, cultural professionals and arts companies to research and plan their tours to France. There is considerably more information available in French than in English on the site, much of it of a technical nature intended for French employers. Particularly useful sections of this site are:

- Dossiers (Dossier Spectacle and Dossier Technicien du spectacle) which gather all relevant documents by discipline.
- Vos questions (e.g. information on use of form E101, VAT/TVA, taxation of royalties)
- Organisers of performing arts shows who are based abroad are advised to consult the French laws on licences for entrepreneurs.

'Présomption de salariat' is a principle whereby in France any artist engaged in the performing arts is presumed to be an employee (salaried status), and therefore subject to normal deductions for tax and social insurance. As a result of this national legislation, legally registered self-employed workers from other EU countries who are temporarily working in France and responsible for their own tax and social security in their home country have found that their remuneration has been subject to tax and social security deductions in France. In this context, France was taken to the European Court of Justice by the European Commission (see above under VI.3) for failing to fulfil its obligations under the principle of free movement of workers in the EU. The Court found in favour of the European Commission in 2006, placing a legal obligation on France to amend its practices.

See comment at:

http://www.artistes-etrangers.eu/index.php?option=com_content&task=view&id=148&Itemid=48

In July 2007, a 'recodification du code du travail' was announced which will exclude certain self employed performing artists from the EU from the 'présomption de salariat' regulation and make it possible to pay their fees on a gross basis. Information at: http://www.artistes-etrangers.eu/content/view/146/2/index.php?option=com_content&task=view&id=198&Itemid=54

Artists, technicians and other cultural workers who are treated as employees will be taxed at a variable rate depending on the amount of the remuneration. See information on the Artistes-etrangers website on 'retenue à la source'.

If, as a foreign artist, your earnings in France are subject to deductions for tax, social security, holiday pay or other, make sure you get a 'Bulletin de Paie' with all details. It may be possible to obtain full or partial refunds. More details at:

<http://www.allarts.nl/articles/2005/France%20-%20Refunds%20Tax%20and%20Social%20Security%20-%2016-02-2005.pdf>

Form E101 should be used to apply for exemption for employees and self-employed artists resident in other EU Member States from paying social security contributions in France. Artists employed in France in the performing arts, enjoy a relatively high level of social and employment protection compared to those in other countries in Europe. Some of these measures may apply to foreign employers of artists who tour in France (for example, an obligation to pay holiday pay and allowances for training) and promoters are recommended to

get professional advice.

The following documents (in French) and links may be useful for artists and arts promoters:

'L'Organisation d'une Tournée à l'étranger': the report of an information day in January 2007, aimed at French professionals in the theatre, dance, music and street arts disciplines who want to tour abroad. The document contains practical advice plus a useful 'Lexique' (glossary) and Bibliography. <http://www.cnt.asso.fr/juridique/fr/tournee29jan.pdf>

'La Circulation International du Spectacle Vivant': report on a 2-day meeting in December 2001 organised by the Performing Arts Resource Centres with workshops on legal formalities, tax administration and social security for French artists working abroad and for foreign artists working in France. Comprehensive document with a useful list of contacts and bibliography. <http://www.cnt.asso.fr/juridique/fr/internat.pdf>.

Various other support documents for French artists working abroad can be found by searching for 'International' under the Informations Juridiques section of: www.cnt.asso.fr

'La Circulation des Artistes', Fiche Pratique produced by IRMA, gives practical information aimed at the contemporary music sector on working abroad and employing foreign artists in France http://crd.irma.asso.fr/rubrique.php3?id_rubrique=1

Guichet Unique Spectacle Occasionnel (GUSO) – a one-stop shop which takes care of all the paperwork required for a non-professional organisation (or an organisation not registered in France) to put on a performance in France. The Guichet Unique provides a free service to ensure all statutory administrative formalities are adhered to www.guso.com.fr

CLEISS (Centre of European and International Liaisons for Social Security) – provides information on bilateral and multilateral social security agreements between France and other countries and advice for workers from France moving abroad. www.cleiss.fr

Real Life Stories

- An Italian theatre company participating in a festival in France was obliged to open a French VAT account. Although they were already registered for VAT in Italy, this was not accepted by the festival administration in France. However, they found the process quite straightforward.
- A Belgian dance company also had to open a French VAT account and noted that France was the only European country they toured to where VAT was charged on fees.
- A Slovenian theatre group could not be employed as a company but the promoter had to issue individual employee contracts.
- UK theatre groups touring in France find the tax situation more complex. It requires more negotiation to agree contracts and fees than with other European countries.
- A Belgian dance group noted that promoters and presenters in France preferred to agree a global fee to include the cost of the production, artists' fees and expenses rather than separating fees and expenses as is the norm in other European countries.
- A French actor works half the year in the UK with an English theatre company and half the year in France. In the UK he is registered as self-employed and in France as an 'intermittent du spectacle'. He found it difficult to get his time working in England acknowledged under the 'intermittent' system. Since he did not work long enough in England to pay national insurance (social security), he could not get an E301 form to

confirm his working period.

Germany

Withholding taxes for non-resident performers are a complex area and advice is required from a local promoter with experience of employing foreign artists. Withholding tax is 21.1% which includes the solidarity surcharge (a special tax introduced to cover the costs of re-unification). This has been reduced from the 25% rate quoted in the 2004 *Real Life Stories* given below. VAT at 16% is generally payable. The German tax system for visiting artists is rigorously enforced and has been defended in several cases at the European Court of Justice.

Some exemptions may be granted by the tax authorities. The German promoter must apply in advance and provide evidence of being a non-profit, independent organisation working in the public interest and that the foreign arts company they are hiring is also a non-profit organisation. The promoter may also be required to confirm that the majority of the fee is being paid out of German public subsidies. According to some promoters, arts projects which can be described as workshops may be tax exempted. Exemptions can be difficult to obtain and are dealt with on a case-by-case basis. An additional complication in Germany is that taxation comes under the federal finance ministries and, where there is scope for interpretation, as with the exemptions to withholding tax, each region may take a different view of the same case.

There has been much debate in the cultural sector in Germany about the level of foreign artists' tax and the high cost of presenting international performances. Tax levels have been reduced and exemptions introduced in recent years but German promoters report that the situation still presents obstacles to professional mobility for artists from abroad.

German tax authorities have imposed withholding tax on both the fee and expenses although this practice was challenged in the European Court of Justice (ECJ) in 2003 (Arnoud Gerritse case, see V.1) and found to be in breach of European Community law. It was again challenged in 2006 (FKP Scorpio Konzertproduktionen GmbH case, see V.1) when the ECJ decided that Germany must allow the deduction of direct expenses before the performance so that withholding tax is only levied on the net profit. In March 2007, the European Commission asked Germany to end discriminatory rules applied to non-resident tax payers, in particular artists and sportsmen. This formal request notes the judgements made in previous ECJ cases and states that the practice of not allowing the deduction of business expenses constitutes "a considerable obstacle to the cross-border provision of services", as guaranteed by Article 49 of the EC Treaty.

Arnoud Gerritse case: <http://www.allarts.nl/artikelen/2003/Gerritse%20-%20decision.pdf>
See also: <http://www.grams-partner.de/>

Scorpio case: <http://www.allarts.nl/articles/2006/2006-10-03%20-%20ECJ%20in%20Scorpio.pdf>

European Commission request to Germany (press release ref. IP/07/413):
<http://europa.eu/rapid/pressReleasesAction.do?reference=IP/07/413&format=HTML&aged=0&language=en&guiLanguage=en>

The following reference material may be useful:

The Mertin Chambers of Attorneys and Tax Consultants in Hamburg advises performers and artists' agents. Their website provides information in English under Foreigners' Tax: <http://www.rechtsanwalt-poser.de/indexe.php>

Administrative regulations (in German) of the German Federal Ministry of Finance as concerns withholding taxes for artists www.lemaitre.de/english/bmf-schreiben.html

Real Life Stories

- A Dutch performing arts company was shocked to discover that they would be liable for 25% tax to perform in Germany. They were issued with German tax forms to be stamped by the Dutch tax authorities in advance of the tour.
- Dance companies from France and Belgium have been able to obtain exemption from withholding tax by presenting evidence in advance of the performance that they are a subsidised company operating as a non-profit association.
- A German dance promoter finds the cost of hiring a foreign dance company is up to 60% higher than for a national company and is a major obstacle to the mobility of foreign artists. This is because of the imposition of 25% withholding tax on fee, per diems and expenses plus 16% VAT and a 3.8% social security tax on the fee.
- A German dance promoter says that exemptions may be granted but it takes time to process and the system is very strict. Performing arts groups with at least five members appearing on stage may be exempted, usually only if they are paid out of funding for that specific project rather than out of general running expenses.
- Artists who teach or run workshops may be exempted from withholding tax but German promoters must take care when applying for exemptions to describe projects with a mix of workshop and performance accurately.
- A German promoter finds that solo performers are never exempted from withholding tax but performing arts groups may be if they are independent non-profit making companies.

Greece

Withholding tax of 20% applies to non-resident performers. Lower rates may apply to artists invited by public authorities.

Ireland

There is no income tax for non-resident artists in Ireland but VAT of 21% is deducted on the gross fee, minus expenses. This tax is the subject of research by the Arts Council of Ireland and the imposition of VAT on non-resident artists is listed as an area of specific concern for the Arts Council.

Ireland has a unique provision of tax-exempt status for resident self-employed creative artists, namely composers, writers and visual artists (Irish Resident Artists' Tax Exemption). Earnings derived from sales and copyright fees from their creative works are exempt from income tax. The Artists Exemption applies to artists living in Ireland who must satisfy various conditions. See: <http://www.revenue.ie/index.htm?/leaflets/artinfo.htm>

Italy

Withholding tax of 30% applies to non-resident performers. However, experiences vary as to the circumstances in which this is applied. Artists are advised to establish a clear contract with a net fee. Work with an experienced promoter who knows how the Italian tax system works. Italy has a relatively high level of personal taxes and social security costs.

Real Life Story I

An Italian theatre producer and promoter with experience of taking productions from Italy on tour to other European countries and receiving foreign artists and companies in Italy reports on the complexities of the tax situation there:

- In principle artists who perform in Italy must be treated as employees. The normal level of deductions from salary for tax and social security is 44%.
- Anyone who presents Form E101 proving that they are employed or self-employed in another EU country can usually negotiate to be paid on a fee basis, without local tax and social insurance deductions.
- Withholding tax at 30% should officially be paid when companies perform but, according to common practice, this is not generally applied in the subsidised theatre and festivals sectors.
- Professionally organised companies from abroad insist on contracts which specify a fee net of all taxes.
- VAT is not payable on fees to performers.
- The level of public subsidy received by an arts organisation in Italy is related to the amount of tax they pay (income tax and social insurance). Theatres and other arts organisations therefore have a clear incentive to act as responsible employers and pay taxes and social insurance as appropriate.
- Workshops and teaching engagements are normally taxed at 30% (unless there is an exemption for an artist holding E101). This is described as a 'cooperation contract'.
- There are special arrangements for royalties: if an artist creates the work in their own country but it is presented in Italy, royalties are taxed at 20%; if both the creative work and the presentation take place in Italy, royalties are taxed at 30%. Royalties are taxed on 75% of the fee, with a 25% tax-free allowance.

Real Life Story II

Comments from the British Council's Red Tape section on touring abroad:

"Withholding tax on foreign artists' earnings in Italy is currently 30% (higher than the UK) and is applied rigorously following the discovery that the double taxation agreement between Italy and the UK does not apply in the case of artists' earnings.

This situation has given rise to a number of problems:

- *The UK tax rate is 23% so groups are being unjustly penalised by the Italian 30% rate*
- *The Italian 30% tax is being levied on the per diem as well as the fee*
- *Many of the larger British orchestras have charitable status and are exempt from tax in Britain. They are therefore unable to claim back in Britain the tax paid in Italy.*

We hope the existing agreement will be reviewed in 2004."

From: <http://www2.britishcouncil.org/home/arts/arts-support-and-funding/arts-performing-arts-red-tape/arts-performing-arts-red-tape-italy.htm>

The Netherlands

As described above (V.1), withholding tax on non-resident performing artists was abolished in the Netherlands in 2007. This applies to any artists who are resident in a country with which the Netherlands has a bilateral tax treaty. The list of countries can be consulted at: <http://www.allarts.nl/articles/2006/82%20countries.pdf>

Performing artists who tour to the Netherlands several times during a year only need to provide one E101 form for the Dutch authorities. It can be used to cover a number of appearances in different locations in the country during the same year, unlike other EU countries who require one E101 per performance.

SICA (Service Centre for International Cultural Activities) provides information to organisations from abroad looking for contacts in the Netherlands. It is involved in a working group to resolve problems with visas and work permits for foreign artists. This cannot deal with individual cases but aims to improve the mobility of international artists wishing to stay and work in the Netherlands. See the SICA web site for advice and fact sheets www.sicasica.nl/english/fact_eng.htm.

Portugal

Withholding tax of 25% is deducted from the earnings of non-resident performers. Some exemptions or variations in practice can be found from venue to venue. It seems that individuals are likely to be subject to withholding tax but companies who can provide adequate proof that the tax will be paid elsewhere (e.g. official invoice with tax number, statement from their own tax office) may be exempted and paid on a fee basis. Educational activities such as workshops or lectures are taxed at 15%.

Real Life Stories

- UK theatre group finds working in Portugal very straightforward and negotiates a fee net of taxes.

Slovenia

Real Life Stories

From a festival director with experience of inviting foreign companies and touring abroad:

- Individual artists must be treated as employees, be allocated a Slovenian tax number and pay the same taxes as a national artist. They are employed under an 'Author's Contract'. Tax is deducted but not social security.
- Companies can be paid on a fee basis without any income/withholding tax deductions but VAT (20%) is charged.
- By law, arts organisations are not allowed to make payments in cash. Per diems must be invoiced for and cannot be paid in cash during the festival.

Spain

Withholding taxes of 25% are payable on earnings by non-resident performers. Companies are advised to negotiate a contract with a net fee. It is best to invoice separately for expenses such as travel, freight, accommodation and per diems so that the local employer does not have to pay 25% withholding tax on them as well as on the performance fee.

Real Life Stories

- UK theatre group notes that some contracts specify the local taxes which the Spanish promoter has to pay. Working with local authorities as festival or venue managers can involve more bureaucracy.
- A Belgian theatre company touring in Spain found it was difficult to get paid because of differences in VAT registration systems. As a non-profit theatre company in Belgium, they were exempt from VAT registration in Belgium. But the Spanish theatre where they performed insisted that they needed a Belgian VAT number in order to pay the invoice. The situation involved consultation with lawyers until the administration department in Spain was persuaded that it was possible to pay them without the VAT number.

Sweden

Withholding tax of 15% is payable on the earnings of non-resident performers who may work in Sweden for up to six months. Withholding tax is described as a 'Special Income Tax on Non-resident Artistes and Others'. Travel and accommodation expenses in connection with the performance are not taxable as long as they are paid direct by the organiser. Creative artists who do not perform - for example, choreographers and theatre directors - are exempt from withholding tax but may be subject to other taxation. Artists from countries which have a double taxation treaty with Sweden may be exempted from withholding tax.

Further advice from the Swedish Tax Authority (under International):

<http://www.skatteverket.se/>

Also see brochure RSV 520 'Special Income Tax for Non-resident Artistes, Athletes and Others': <http://www.skatteverket.se/download/18.3a2a542410ab40a421c8000434/52006.pdf>

Real Life Stories

- There has been debate in the cultural sector about the relative costs of employing Swedish artists (tax and social security deductions are around 32%) and foreign artists with concern that easier cross-border traffic with mainland Europe generates a competitive market in some artistic sectors.

United Kingdom

Withholding tax at the basic income tax rate (currently 22%) is payable by non-resident performers. The Foreign Entertainers Unit (FEU) of the Inland Revenue tax administration provides a specialised advice and administration service. UK promoters can apply in advance to FEU for exemption on production expenses (travel, accommodation, equipment rental, payments to agents, technicians, support staff etc.). Claims for exemption or reduction of withholding tax are made under the Reduced Tax Payment Application.

There is a Simplified Tax System for classical music which applies to payments made for

classical music artistes through a defined list of promoters in the UK. Payments can be made direct to any payee on this list without any deduction of tax.

For all information, consult the FEU website: www.inlandrevenue.gov.uk/feu/feu.htm

The following may be useful for foreign artists visiting the UK and UK artists working abroad:

Information for UK artists who want to tour abroad is available on the British Council's website. 'Red Tape' pages for many countries around the world list information on tax, work permits, visas, insurance, freight and carnets:

<http://www2.britishcouncil.org/arts-performing-arts-red-tape.htm>

Information for producers, promoters and agents wishing to present foreign artists in the UK is found in the Visiting Arts publication 'Cutting through the Red Tape' on:

http://www.visitingarts.org.uk/info_resources/graphics/visiting_arts_red_tape2006.pdf

Also available on this website is 'Nail to Nail', guidelines for presenting international visual arts in the UK. Both publications are informative on tax, visas, police registration, work permits etc. and are useful for artists considering working in the UK.

Visiting Arts publishes help sheets with tips for approaching UK producers and presenters. Theatre and Dance:

www.visitingarts.org.uk/info_resources/graphics/visiting_arts_tips_theatre_dance.pdf

Music: http://www.visitingarts.org.uk/info_resources/graphics/visiting_arts_tips_music.pdf

The Independent Theatre Council runs a regular training course – 'Passport to International Touring'. A help sheet 'Overseas Workers & Overseas Work' is available to ITC members only. www.itc-arts.org

'Gigging Abroad', a fact sheet produced for the Musicians' Union, who have also campaigned on the problems encountered by musicians travelling by air with musical instruments:

<http://www.musiciansunion.org.uk> (see under Advice and 'Airlines' in the document library)

Real Life Stories

- For artists coming from abroad it is best to be employed on a fee basis. Exemptions from withholding tax may be granted. Budgets must be submitted by the UK promoter to the Foreign Entertainers Unit (FEU) in advance to apply for exemption.
- Companies coming from abroad are recommended to avoid being paid on a 'box office split' or percentage of the ticket sales. Here a different tax arrangement applies (net of tax and VAT) which is more complicated and less beneficial for a foreign artist.
- A French actor works half the year in the UK with an English theatre company and half the year in France. In the UK he is registered as self-employed and in France as an 'intermittent du spectacle'. He found it difficult to get his time working in England acknowledged under the French 'intermittent' system to claim social benefits. Since he did not earn enough in England to pay national insurance (social security), he could not get an E301 form to confirm his working period.

VIII. A quick checklist

- Get organised well in advance – allow enough time for the necessary formalities at home and in the country where you go to work
- Establish good communication with the promoter, venue or organiser. It is in both your interests for you to work legally and avoid unnecessary taxes.
- Use the contract to negotiate fees and expenses net of all taxes and social security deductions where possible
- Specify payment in your own currency to avoid rate fluctuations
- Get the necessary E Forms before you travel – remember that you may have to apply 30 days in advance
- Make sure you have adequate medical cover, either with the European Health Insurance Card or private insurance
- Get up to date information on visa requirements, work permits, residency regulations
- Make sure your passport is not about to expire – for some countries your passport must be valid for at least a year from when you arrive
- If you pay any tax, ask for a tax certificate in your own name before you leave the country
- If you work for a longer period, when you leave ask for the relevant E Form to certify the period of work and social security payments made

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The information and advice provided in this guide have been researched from various sources and are believed to be accurate. However, tax rates and regulations are subject to frequent change. It is essential to take specific professional advice before any undertaking. The author and publishers cannot be held liable for any inaccuracies.