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By PwC Deutschland | 22 August 2025

Taxation of income earned by a public service orchestra musician employed in Luxembourg

An orchestra musician employed by a public corporation in the Grand Duchy of Luxembourg is an artist within the meaning of Article 16 (1) of the double tax treaty between Germany and Luxembourg. The Supreme Tax Court has recently decided that his salary is taxable in Germany as income from employment with a credit of the tax paid in Luxembourg.

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Background

The plaintiffs are married and live in Germany. In 2015, the year of dispute, the plaintiff was employed by the state orchestra in Luxembourg and received income from employment as a musician. The employer liable for wage tax was a public-law corporation subsidized by the Ministry of Culture of the Grand Duchy and supported by the City of Luxembourg. Neither the orchestra nor the employer are profit-oriented in accordance with their state cultural mandate. The tax office took the plaintiff's salary as income from employment and issued a corresponding income tax assessment with a tax credit of the Luxembourg tax. The appeal to the tax court of Rhineland-Palatinate was not successful.

Decision

The Supreme Tax Court confirmed the previous decision. The plaintiffs, who are resident in Germany, are subject to unlimited tax liability in Germany on their worldwide income. This also includes the plaintiff's employment income from foreign sources - in this case, the remuneration that the plaintiff received as an employed musician.

Although the wages at issue here were paid to the plaintiff by a Luxembourg public corporation for services rendered to it, the application of Article 18 (1) letter a of the double tax treaty with Luxembourg (DTT) is precluded by Article 18 (3) DTT whereupon salaries, wages, and similar remuneration and pensions for services rendered **in connection with a business activity** of a Contracting State, one of its states, one of its local authorities, or another legal entity governed by public law of that State shall be subject to Articles **14**, 15, **16**, or 17.

Pursuant to **Art. 14 (1)** DTT, and subject to Articles 15 to 19 DTT, salaries, wages, and similar remuneration received by a person resident in a Contracting State in respect of employment may be taxed only in that State, unless the employment is exercised in the other Contracting State (sentence 1). If the work is performed there, the remuneration received for it may be taxed in the other State.

However, Art. 14 (1) DTT does not apply in the case of dispute because **the requirements of Art. 16 (1) DTT are fulfilled**which takes precedence over the former provision: Income received by a person resident in one Contracting State, inter alia, as an artist from activities personally exercised in the other Contracting State may be taxed in that other State (here: Luxembourg). Contrary to the plaintiffs' opinion, this provision applies not only to self-employed and/or traveling people, but also - as in the plaintiff's case - to employed and locally based artists and athletes, the Supreme Tax Court said.

In this case, double taxation is therefore not avoided by exempting the remuneration from German income tax but rather by crediting the tax levied in Luxembourg against the German income tax in accordance with Art. 22 (1) (b) (ff) DTT.

A public-law entity is deemed to be engaged in **business activities** if the public sector engages in sustained economic activity with the intention of generating revenue and this

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activity stands apart economically from the overall activities of the contracting state or legal entity. In this respect, the public institution “Salle de concerts Grande-Duchesse Joséphine-Charlotte” carries out **a business activity within the meaning of Art. 18 (3) DTT** with the Orchestre Philharmonique du Luxembourg. The Philharmonic Orchestra has a cultural mandate from the state and is supposed to promote Luxembourg's cultural reputation. Running the orchestra is unprofitable and requires state funding. Nevertheless, in addition to promoting culture, the Philharmonic Orchestra also pursues the goal to generate income.

The public institution “Salle de concerts Grande-Duchesse Joséphine-Charlotte” also competes significantly with private providers of musical entertainment by organizing concerts that charge admission fees, regardless of its state cultural mandate and its unique position as a “state orchestra.”

Note: The result of the decision may seem surprising at first glance because “normally” the country of employment has the right to tax employees, and their income is exempt in the country of residence. This is due to the specific provisions in the new German-Luxembourg DTT which were introduced in 2012 for certain professional groups (i. e. artists, musicians, and athletes). Hence, the plaintiff’s Luxembourg payroll income is no longer exempt from German income tax since the new Luxembourg DTT came into force (as of 1 January 2014).

Source:

Supreme Tax Court decision of 20 March 2025 VI R 25/23 - published on 21 August 2025.

Keywords

double tax treaty, employee taxation, public sector