

Europe-Hong Kong Tax Treaties (Articles 14 – 27)

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Arts 14 & 15 OECD MC

- Independent Personal Services
 - 3 countries (Italy, Portugal, Switzerland)
 - follow in general UN MC

- Income from Employment
 - paragraph 2
 - deviations with regard to the 183-days rule
 - fourth requirement: *"the remuneration is taxable in the first-mentioned Party according to the laws in force in that Party."*
 - deviations from paragraph 3
 - missing: *"exercised aboard a boat engaged in inland waterways transport"* in all analysed treaties
 - "only" enterprise in all analysed treaties

Arts 16 & 17 OECD MC

- Directors' fees
 - specification of the term "*member of the board of directors*" (Netherlands, Portugal)
 - Belgium: „*remuneration [...] in respect of the discharge of day-to-day functions of a managerial, technical, commercial or financial nature may be taxed in accordance with the provisions of Article 14*].

- Artistes and Sportsmen
 - deviations from the term "*sportsmen*" (Netherlands: "*sportsperson*", France: "*athletes*")
 - France in paragraph 2: „*himself but to another person, whether a resident of a Contracting Party or not*"
 - special provision if visit is funded by public funds (Hungary, Netherlands, Switzerland)

Art 18 OECD MC

- Pensions
 - *“lump sum payment”*
 - *“annuities”* (Belgium and Netherlands)
 - *“self-employment”*
 - exclusive taxation where payment arises (Czech Republic, Hungary, United Kingdom, Switzerland)
 - *may be taxed where payment rises* (Belgium, Italy, Netherlands)
 - special provisions: *“alimony or other maintenance payment”* (Belgium, Luxembourg)
 - Social security pensions: only where scheme is recognised (Austria, Guernsey, Jersey, Malta, Ireland, Liechtenstein, Luxembourg)
 - *may be taxed where scheme is established / paying state* (Portugal / Netherlands)

Art 19 OECD MC

- Government services
 - professional chambers (Austria, Italy)
 - *“in the discharge of functions of a governmental nature”* (Ireland)
 - no reference to pensions (Czech Republic, Hungary, Switzerland, United Kingdom – but: Art 18 ...)
 - no Art 19 (2)(b) OECD MC (Austria, Belgium, France, Liechtenstein, Luxemburg)

- Students
 - no „*business apprentice*“ - reservation
 - exception: Czech Republic (apprentice)
 - extension to trainee[s] (France, Belgium)
 - Italy: „*The benefits of this Article shall extend only for a period not exceeding six consecutive years from the date of his arrival in the first-mentioned Party*“

Art 23 OECD MC

- Methods to Avoid Double Taxation
 - credit method
 - “maximum deduction”

■ Non Discrimination

- replacement of "*nationals*" by "*the right of abode*" and "*incorporated or constituted in*" – reservation
- paragraph 1: last sentence is missing (Austria, Belgium, France, Luxembourg, United Kingdom)
- stateless person – paragraph 2 (missing in most treaties)
- paragraph 3: last sentence as an own paragraph (Czech Republic, Luxemburg, United Kingdom)
- paragraph 4: last sentence missing in more than ½ of the analysed DTT
- paragraph 6: missing in some tax treaties

- Mutual Agreement Procedure
 - OECD MC: *“case must be presented within three years”*
vs. Italy: *„two years”*
 - Belgium: only cases provided for in the Convention
 - more than half of the treaties: no arbitration

Art 26 & 27 OECD MC

- Exchange of Information
 - no information that existed prior to the entry into force
 - Belgium: *“necessary”* vs. *“foreseeably relevant”*
 - Czech Republic: *“on request”*
 - *“covered by this Agreement”*
 - *“shall not be disclosed to any third jurisdiction for any purpose”*
 - Belgium: no Art 26(4) & 26(5)
- Mutual Assistance in the Collection of Taxes
 - no provision



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