Germany:

Taxation of internationally working referees

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Introduction

As we are all aware, a referee is an impartial person who conducts a match of two teams competing against each other in various types of sports. He supervises the regular course of the match on the basis of the relevant rules of the sport in question and takes the factual decisions and timekeepings required and penalises rule-adverse behaviour by disciplinary measures.

A referee must control all rules of the relevant sport reliably. For this purpose, the involved sports federations of the different sports issue rulebooks and request the referees appointed by them to participate regularly in advanced training courses and schoolings so that the licence granted to the referee remains valid. These measures ensure that the competition is decided in line with the regulation of the relevant sport.

Football referees renowned worldwide are, for example, the FIFA-referees Pierluigi Collina (Italy)[2], Anders Frisk (Sweden)[3], the Swiss Urs Meier[4] or Rudi Glöckner[5] of Leipzig, so far the only German who controlled the finals of a world championship, i.e. at the football world championship 1970 in Mexico.[6]

Within the context of international competitions, however, not only the sets of rules of the individual federations are decisive, but also the relevant national tax legislations of the countries of residence and of the countries where the work of the involved referees is carried out. In this article, the focus is directed to the taxation of referees resident in Germany.

Fiscal environment in Germany

The national German tax law divides taxable income for taxpayers whose world income must be taxed in Germany (par. 1 Einkommensteuergesetz (EStG) (Income Tax Act) in seven different types of income (par. 2 clause 1 sentence 1 EStG).

Concerning the fiscal treatment, there are different regulations for each of these individual types of income. It is, therefore, required to allocate the assessable income of the referee resident in Germany to one specific type of income.

With regard to the taxable revenues of the referees different types of income can be involved, i.e.:

- income from trade business (par. 2 clause 1 sentence 1 no. 2 EStG);
- income from self-employed activity (e.g. freelancer) (par. 2 clause 1 sentence 1 no. 3 EStG);
- income from employed activity (e.g. wage) (par. 2 clause 1 sentence 1 no. 4 EStG);
- also so-called "other income within the meaning of par. 22 EStG may be assessed (par. 2 clause 1 sentence 1 no. 7 EStG).

In accordance with par. 1 clause 2 Lohnsteuer-Durchführungsverordnung (LStDV)7 (Income Tax Implementing Regulation,) an employment relationship in conformity with the German tax law arises if the employee or worker owes his/her labour to an employer. This is always the case if the person involved in performing his/her commercial intention is directed by an employer or is obligated to comply with instructions within the employer's business structure.

Taking into account these characteristics, it may become apparent that the activity of a referee is determined by the federations with regard to the location and time of the individual matches – which might possibly be considered as a certain type of dependence as of an employee under an employment. The finding, however, that factual decisions of a referee are binding, even if

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2 https://en.wikipedia.org/wiki/Pierluigi_Collina (accessed 31 May 2018).

3 https://en.wikipedia.org/wiki/Anders_Frisk (accessed 31 May 2018).

4 https://en.wikipedia.org/wiki/Urs_Meier (accessed 31 May 2018).

5 https://en.wikipedia.org/wiki/Rudi_Gl%C3%B6ckner (accessed 31 May 2018).

6 https://de.wikipedia.org/wiki/Fu%C3%9Fball-Weltmeisterschaft_1970#Finale (accessed 31 May 2018).

7 BGBl 1989 I, 1848.

these are made contrary to the rules, is significant. Such a decision-making authority cannot be perceived for an employee and it is evident that the requirement to observe the employer's instructions is omitted. In the course of the actual match, the federation cannot intervene by any instruction. Besides, all decisions of a referee pertaining to the perception of facts are – even at a later date – final and incontestable.[8] Consequently, referees are neither employees of the potential clubs nor of the federations involved.

In the view of the German fiscal administration, payments and expense allowances to referees must be regarded as "other income within the meaning of par. 2 clause 1 sentence 1 no. 7 EStG in conjunction with par. 22 sentence 2 no. 3 EstG, if these are based on the referee's assignment for a federation on national level (Deutschen Fußball-Bundes (DFB) (German Football Federation) including state and regional federations.[9] "Other income , according to par. 22 sentence 2 no. 3 EstG, is for the recipient free from income tax up to € 255 p.a., but must, however, be stated in the relevant annual tax return. If this exemption limit is exceeded, the total amount of income will become taxable.

In the view of the Tax Court Nürnberg, referees income in the field of equestrian sport must be excluded from commerciality if these referees are active in the field of amateur sport.[10] If football referees, however, are working not only in Germany, but also on an international level (e.g. for the Union of European Football Associations (UEFA) or the Fédération Internationale de Football Association (FIFA) or in other foreign leagues, such as e.g. Stars-League-Qatar), there is, in the view of the German fiscal administration, income from trade business to the total extent, i.e. with regard to the domestic and foreign revenues.[11]

This approach is contradicted by the Tax Court Rheinland-Pfalz negating income from trade business in this context.[12] This Court opines that a participation of a referee in general economic transactions – which would qualify as income from trade business – cannot be determined. In this Tax Court's view, the referee was not active "on the market because a "market for football referees does not exist actually. The Bundesfinanzhof (BFH) (Federal Fiscal Court) clarified, in a previous decision, that a participation in general economic transactions does also apply if there are contractual relations to one person only.13

From the legal point of view of the Tax Court Niedersachsen, tennis referees operate commercially in any case.[14] This Tax Court takes the view that a participation in general economic transactions can be determined for internationally active tennis referees by contrast to referees of the national league, because the first mentioned are internationally active and not only for one sports federation.

If one takes the view of the Tax Court Rheinland-Pfalz, as described above, taxable income of football referees is subject only to income tax but not concurrently to trade tax. In the absence of commerciality, the total tax burden is regularly lower, because, nowadays, trade tax can, unlike in previous years, be taken into account for income tax; a full crediting can, however, not be guaranteed (see par. 35 EStG). The latter may occur, in particular, if the imaginary taxable person lives in a major German city where trade tax as a local tax is normally higher than in small municipalities. It must also be considered that a categorisation as a business enterprise involves consequences for the accounting and the annual accounts. A business enterprise must determine its profit by preparation of a balance sheet (par. 5 clause 1 EStG) in accordance with the relevant regulations of German tax law, taking into consideration the commercial law principles of proper accounting; in particular, if certain limits are exceeded according to par. 141 Abgabenordnung (AO) (Tax Code) (turnover more than 600,000 p.a. or profit more than 60,000 p.a.).

The above explanations reveal why a referee resident in Germany is very interested in clarifying the issue how to categorise his domestic and foreign income into the different types of income described.

Recent national jurisprudence on the question of commercial income of a referee

In its current ruling of 20 December 2017, the BFH[15] (Federal Fiscal Court) made a legal classification for the fiscal treatment of income of a referee resident in Germany in the case of the German referee Markus Merk[16] living near Kaiserslautern. In the opinion of the highest German Tax Court, football referees must be classified entirely as business people according to tax law, whereby, during international assignments, any permanent establishment is not created at the relevant match venue by which the right of taxation could be relocated to a foreign country. In the view of the BFH, this determination alone justifies the assessment of (national) trade tax both on income generated at home and abroad. Any obstacles from a double taxation convention that would restrict the national right of taxation, as, for example, for the taxation of sportsmen, specified in art. 17 clause 1 OECD Model Tax Convention (OECD MA), are not existent in the relevant country where the work is carried out.

8 Schütz, in: *Zeitschrift für Sport und Recht* 2014, 53.

9 OFD Frankfurt/M. v. 24 April 2012 - S 2257 A - 19 - St 218, ESt-Kartei par. 22 Karte 3.

10 Finanzgericht Nürnberg, Urteil vom 15 April 2015, 5-K 1723/12, EFG 2015, S. 1425.

11 OFD Frankfurt/M. v. 24 April 2012 - S 2257 A - 19 - St 218, ESt-Kartei par. 22 Karte 3.

12 Finanzgericht Rheinland-Pfalz, Urteil vom 18 Juli 2014, Az. 1 K 2552/11, EFG 2014, S. 2065.

13 BFH Urteil vom 5 Dezember 1999, I R 16/99, BStBl II, 2000, S. 404.

14 Niedersächsisches Finanzgericht, Urteil vom 24 November 2004, Az. 9 K 147/00, EFG 2005, S. 766.

15 BFH Urteil vom 20 Dezember 2017, Az. I R 98/15, BFH/NV 2018, S.497.

16 https://en.wikipedia.org/wiki/Markus_Merk (accessed 31 May 2018).

Mr. Merk, who is also internationally very renowned and was elected world referee three times,[17] worked as a football referee at home and abroad, i.a. in the relevant years of the decided case (2001 until 2003). Besides matches of the National Football League, he conducted matches of the Football World Championship organised by FIFA, as well as qualifications for the European Championship, of the UEFA Champions League and of the UEFA Cup, each organised by UEFA.

Differing from the legal opinion of the Tax Court Rheinland-Pfalz as cited above, Mr. Merk's activity as a referee constitutes, in the opinion of the Federal Fiscal Court, a business enterprise under tax law aspects, because there is an independent and lasting activity aimed at making profit and with participation in general economic transactions.[18] According to the Federal Fiscal Court, the independence can be concluded from the fact that a referee works for the realisation of income at his own account and risk and can develop entrepreneurial initiative as an independent entrepreneur. In the legal opinion of the Federal Fiscal Court, any employment bound by instructions – being opposed to a classification as business income – cannot be ascertained, even though the activity is determined by the football federations concerning place and time of the individual matches. For this, the Federal Fiscal Court states the reason that, during a football match, any authority to issue directives by a federation as imaginary employer is not given. The match constitutes the actual focus of a referee's activity and this has to be taken into consideration. In case of illness or leave, Mr. Merk was not entitled to remuneration – contrary to the characteristics of an employment. During the period under dispute (2001 until 2003), any current payments were not made by the German Football Federation or by other federations. Mr. Merk had to bear his own expenses from the remunerations obtained.

From the point of view of the Federal Fiscal Court, Mr. Merk's activity as a referee corresponds in its type and extent to a normal entrepreneurial market participation for which the number of contractual partners is irrelevant. So far, the Federal Fiscal Court abided by its previous jurisprudence.[19] In the legal opinion of the Federal Fiscal Court, a referee activity for a state or national federation (such as the German Football Federation) can already involve an entrepreneurial market participation in the overall context. The Federal Fiscal Court states that referees as Mr. Merk maintain only one permanent establishment, i.e. in the relevant habitation at home, which is considered as a place of management. Whereas at the venues within the country and abroad (in this context the Federal Fiscal Court thought of referee cabins), a referee does not maintain any "fixed place of business or a facility which serves company's activity and, therefore, also not any permanent establishment. In the Federal Fiscal Court's view, the German taxation right is not excluded by any convention for the avoidance of double taxation (Double Taxation Convention). Even if a football referee is physically active during his professional activity, he does not perform an activity "as a sportsperson within the meaning of the relevant double taxation convention. His activity is indeed perceived by the audience of the football match, but only other persons, i.e. the players, are enabled to take part in the sports competition. Therefore, a taxation according to a double taxation convention is not assigned to the foreign country of work performance due to lack of relevance of a regulation based on art. 17 clause 1 OECD MA.

Criticism and effects on the taxation in Germany

The quoted decision of the Federal Fiscal Court has serious effects on the taxation of referees in Germany.

For this, it is irrelevant whether they realize their income only in Germany and/or also abroad. Although the ruling was focussed on Mr. Merk, a referee of the 1st National Football League working at home and internationally, from now on, football referees from the sector of amateur football can also become taxable for trade tax and can be made liable for the payment of this tax if the trade tax exemption amount of € 24,500 p.a. according to par. 11 clause 1 sentence 2 no. 1 GewStG is exceeded. This approach could impose an additional financial burden on amateur sport, because the referee involved will pass on his costs (including trade tax) on his remuneration claims to remain profitable. The tax exemption amount of € 24,500 already mentioned must, however, be taken into account. Remunerations for referee activities in the lower leagues and, in particular, in the sector of amateur sport, are so low in Germany that the taxpayers involved are indeed subject to trade tax theoretically, but will not be asked for payment, in practice, because the exemption amount of € 24,500 is not exceeded. In the leagues below the 2nd National Football League, comparatively low remunerations are paid for referee activities in Germany per match, i.e. 3rd league € 750; regional league € 300; first league € 50; club league/ state league € 34; and for county league/district league € 20.[20]. A potential liability to file a trade tax return cannot be considered as a disadvantage. The tax authority may refrain from the filing of this return on the basis of par. 25 clause 1 no. 1 Gewerbesteuer-Durchführungsverordnung (GewStDV) (Trade Tax Implementing Regulation), so that any additional costs, for example, for the services of a tax consultant, will not be incurred. In the sector of the lower leagues, the problem of commerciality seems to be of no particular relevance under practical considerations.

There is, however, a completely different situation for the sector of professional football. It can be assumed that demands will be made to pass on the German trade tax

17 https://en.wikipedia.org/wiki/International_Federation_of_Football_History_%26_Statistics#IFFHS_World's_Best_Referee (accessed 31 May 2018).

18 Dazu allgemein BFH Urteil vom 13 Dezember 1995, Az. XI R 43-45/89, BStBl II 1996, 232; BFH Urteil vom 7 zecember 1995, Az. IV R 112/92, BStBl II 1996, 367.

19 BFH Urteil vom 5 Dezember 1999, I R 16/99, BStBl II, 2000, S. 404.

20 www.vermoegenmagazin.de/schiedsrichter-gehalt-bundesliga (accessed 31 May 2018).

to the remuneration entitlement. Therefore, the relevant services could become more expensive in the national context, because the fixed remuneration rates of the federations will be adjusted. It appears, however, doubtful whether such an effort can also be realized within the sector of the international federations. Irrespective of the knowledge that non-negotiable fixed remuneration rates are paid for international matches,[21] why should a referee from Germany demand and receive a higher compensation than a competitor from another country, who is not subject to such a tax, and can, therefore, offer his services less expensively due to a lower cost burden? In this approach, the German referee has the choice to either pay the German additional tax out of his own pocket or to refrain completely from this engagement. The latter choice will certainly damage the German image on an international level. Across the border, the international tax competition leads to a financial disadvantage for German referees. Their net earning capacity is probably lower compared with their foreign competitors.

The explanations of the Federal Fiscal Court concerning the existence of a permanent establishment are important, too. It is outlined that each commercial enterprise has – at least – one permanent establishment to be localized at the place of management to which the total company profit must be allocated, in case of any doubt or in the absence of another additional permanent establishment. Generally speaking, a "travelling" tradesman, a person who exercises his business at changing locations without creating any (further) permanent establishments at these places, is taxable solely at the place of his residence. If any other fixed business facility cannot be ascertained the referee's home – regardless of the fact that it is related to his private area – will be considered as management's permanent establishment because the business plannings and other issues are settled there.

The court decision will probably have effects on referees of other sports. Unlike football, any trade tax consequences will, however, possibly not arise, because the amounts of the referee remunerations paid in sports with a lower economic power in Germany are considerably less than those paid in the football sector.

It may be doubted, however, whether the findings made by the Federal Fiscal Court concerning the Merk decision and related to the years 2001 until 2003 are still applicable for referee activities in the 1st and 2nd National Football League, because the contractual framework was changed.

Meanwhile, referees of the 1st National Football League receive in Germany for the season 2018-2019, besides a remuneration in the amount of € 5,000 per match refereed, also current annual remunerations which amount to € 70,000 p.a. after 5 years of professional experience. If they are also referees of FIFA the annual fixed amount will be increased by a further € 10,000 to € 80,000 p.a.[22] Furthermore, referees of the National German Football League must participate obligatorily in training courses in accordance with the provisions of the German Football Federation, that is, upon instruction. For such a scenario, the question of the classification of the referee's activities as an employee of the German Football Federation arises on the national level which would be opposed to a tax treatment as a business enterprise.

For the differentiation between an employment relationship and a professional independence, the level of personal dependence of the working person will be decisive. Such a person works independently who is basically free to organize his working activities and his working hours. In general terms, an employer has an instruction right towards his employee, in particular, with regard to the question when, how long and where the employee has to perform his working activities. Whether a person can be classified for business transactions as an employee or as self-employed can be decided finally with regard to the specific individual situation.

In a current ruling, the State Labour Court of Hesse dealt with the question of the status of employment or self-employment of a referee of the German Football Federation. It stated its finding that an employment relationship of referees and the German Football Federation cannot be justified under legal aspects.[23] This court of the second instance, which did not permit any appeal to the Federal Labour Court at Erfurt for reasons of existing definiteness, was guided by the following considerations for reaching its adjudication:

To this day, referees working in the German football professional leagues practise normally another main profession besides their work as referees. Therefore, the referee activities for the football matches can be considered as part-time work. In the legal proceedings in question, the referee and doctor of law Malte Dittrich filed a suit. He was on the so-called referee-list of the German Football Federation lastly during the season 2014-2015. In this list, the Panel of Referees appoints those referees (including assistants and 4th official) who are considered suitable for referee activities in the licence leagues (1st and 2nd National League), in the 3rd league and for the Cup of the German Football Federation. The temporary contract limited to the season 2014-2015 concluded between the German Football Federation and Dittrich on the basics of referee activities was not renewed by the German Football Federation for the next season. The complaining referee was appointed the end of May 2015 in a 3rd league match for the last time.

21 www.vermoegenmagazin.de/schiedsrichter-gehalt-bundesliga (accessed 31 May 2018).

22 www.vermoegenmagazin.de/schiedsrichter-gehalt-bundesliga (accessed 31 May 2018) with further substantiation for remunerations to referees of FIFA, UEFA Champions League and European League, the English Premier League and the Spanish Primera Devision.

23 Hessisches Landesarbeitsgericht, Urteil vom 15 März 2018, Az. 9 Sa 1399/16.

In the first instance, Dittrich brought an action before the Labour Court Frankfurt am Main without success. It was his primary intention to continue his referee work during the matches, which can only be guided by referees named in the list according to the relevant regulations. In Dittrich's legal opinion, referees should be considered as employees. In the appeal proceedings before the State Labour Court of Hesse, Dittrich asserted that he was appointed for certain matches in the seasons until summer 2015 as an employee bound by instructions in accordance with his service plan and that he was bound by specialist and content-related instructions. As he was appointed for the duration of 9 seasons in total, the German Football Federation would not have been allowed to limit the duration of his contract. In Dittrich's view, the contract would remain in full force and effect and his appointment for matches in the professional sport should, therefore, be continued.

Now the State Labour Court of Hesse judged that the contract concluded for a season is not an employment contract within the meaning of par. 611a Bürgerliches Gesetzbuch (BGB) (Civil Code), but a so-called framework agreement. This framework agreement only rules the conditions for the individual contracts to be concluded during the season on referee activities for the relevant matches. The framework agreement does not imply an obligation of the referee to take over certain matches. In accordance with the framework agreement, the referee cannot request explicitly that (specific or in general) matches are assigned to him. As Dittrich's disputed referee contract does not constitute an employment contract, it cannot be examined by a labour court with regard to the validity of fixed-term provisions in employment contracts.

In my view and under acknowledgment of the decision of the State Labour Court of Hesse as quoted above, football referees cannot be regarded as employees of an association or of a federation who engage them for referee activities for certain matches. There is no dependent relationship of an employee towards his employer. The main characteristics required for referees, such as independence and non-influence, are incompatible with the criteria of a service relationship in the form of an employment relationship. There are typical differentiation criteria for employees which are missing here. In particular, referees:

- are not entitled to paid leave;
- are not entitled to remuneration in case of illness;
- are not subject to employer's context-related right of instruction;
- work regularly for different clients;
- their relevant activity is not included in a hierarchical relation;
- work only for a minor duration; and
- obtain their material work equipment themselves.

In consideration of these findings, I think that the fiscal assessments of the Federal Fiscal Court remain applicable, stating that referees income in Germany is income from an independent commercial activity for which trade tax must be paid. A referee participates in general economic transactions. Referee activities are services which are offered by referees qualified for the relevant division – a great number of persons – and are aimed at an exchange of services in view of the remunerations paid by the federations. The number of the matches refereed in Germany certainly exceeds the scope of a "private and, in this sense, non-business activity, which can be verified, in particular, by the number of matches and the amount of revenues achieved by these matches in the 1st and 2nd Football National League. A referee's activity becomes obvious for the general public, because it becomes visible for the players and for other persons (e.g. stadium visitors). It is solely decisive that the federations ask for the service offered, i.e. directing the match as a referee and offer for this service remunerations in a considerable amount. As income from business operation is applicable, the question whether there is income from self-employment within the meaning of par. 18 clause 1 EStG does not apply .[24]

Furthermore, one can also agree with the Federal Fiscal Court's opinion determining one single permanent establishment at the place of the habitation. In a previous judgment, the Federal Fiscal Court found already that a professional sportsman maintains one (single) permanent establishment at the place where he develops the firm centre of his commercial activity which can also be justified by a fixed training facility.[25] The Tax Court Münster agreed in a recent judgment with the opinion of the Federal Fiscal Court and determined the permanent establishment of a professional sportsman to be the place where he trains and plans his competitions.[26] Following up these legal findings one has to recognize soon that such criteria cannot be envisaged for referees because possible facilities, such as referee cabins, are used only for a short time and can, therefore, not be considered as a fixed facility.[27] Referees' activities connected with the relevant plannings are executed at the referee's respective residence. For this reason, the country of residence, in our case Germany, is competent for the taxation, also of the foreign income.

Finally, it also cannot be objected that for a referee a regulation does not apply which is based on art. 17 clause 1 OECD MA. Unlike the term "artist" the term "sportsman" is not specified in art. 17 clause 1 OECD MA. As a term under convention law it can be interpreted broadly.[28] Referees, however, cannot be classified as sportsmen.[29] This is because the regulation of art. 17 clause 1 OECD MA concerning

24 Finanzgericht Nürnberg, Urteil vom 15 April 2015, 5-K 1723/12, EFG 2015, S. 1425; BFH Urteil vom 17 Februar 1955, Az. IV 77/53 S, BStBl III 1955, 100.

25 BFH Urteil vom 17 Februar 1955, IV-77/53-S, BStBl 1955 III, S. 100.

26 Finanzgericht Münster Urteil vom 10 Mai 2006, Az. 1 K 92/03 E, EFG 2006, S. 1677.

27 Maßbaum, *Die beschränkte Steuerpflicht der Künstler und Berufssportler unter Berücksichtigung des Steuerabzugsverfahrens* (1991), S. 150f.

28 Wassermeyer in: DBA, art. 17 OECD MA, No. 26.

29 Klaus Vogel, Double Taxation Conventions, art. 17, no. 50.

sportsmen is customized to such persons performing as competition sportspersons.[30] This approach explains why, for example, a tennis player who offers training hours in another country can only then be taxed in that country if these hours were performed within the scope of a public competition.[31] A referee does not meet these requirements, because he/she "only supervises the respective match and penalises rule violations by means of the set of rules made available to him/her.[32] Unlike the football player himself, the referee is not in a competition situation. In this evaluation, the competition character, inherent in sports, is completely missing with regard to a referee.

In relation to this legal context, it is made clear that, with regard to the regulations of international double taxation conventions in connection with the taxation of referees, only such provisions are applicable which apply to the taxation of commercial profits within the meaning of art. 7 OECD MA. As a rule, the right of taxation for commercial income is granted to the country of residence, unless the referee concerned maintains a permanent establishment in the respective other country. As already explained, such facilities are regularly non-existent and, therefore, only the country of residence is entitled to levy tax; also with regard to trade tax. In accordance with international tax law, a referee is not classified as a sportsman and, therefore, his income also from foreign activities remains subject to taxation solely at his place of residence in Germany. The world income principle according to par. 1 EStG applies.

If referees work also for advertising purposes, possible income from advertising activities are also considered as income from trade business. If there is a material connection between the advertising activity and the activity as a referee, for example, because advertising is attached to the shirt, a unified business enterprise must be assumed which comprises also the referee activity. This means, that for referees who are appointed exclusively on a domestic level, amounts which were entered as "other income under previous law are transformed, in any case, to Income from trade business.[33]

Summary

Referees generate income from trade business in Germany and must pay trade tax here. Trade tax is indeed allowable against income tax, but the amount of crediting is limited and, therefore, the total tax burden of the referee resident in Germany will be increased in many cases.

Within the international context, it can be presumed that he cannot pass on the higher burden to his remuneration entitlement.

The income to be taxed in Germany includes also foreign revenues, because the referee maintains only one place of management, and, accordingly, only one permanent establishment at his place of residence.

Regulations in double taxation conventions, based on art. 17 clause 1 OECD MA, do not prevent taxation of a referee's foreign revenues in Germany, because a referee is not classified as a sportsman and, therefore, taxed in accordance with the relevant regulations based on art. 7 OECD MA.

The taxable income includes also advertising revenues.

30 Maßbaum, in: Gosch, Kroppen, Grotherr, DBA Kommentar, art. 17 OECD MA, no. 50.

31 Stockmann, in: Vogel, Lehner, DBA, art. 17 OECD MA, no. 31.

32 Same opinion Hidien, in: Kirchhof, Söhn, Mellinghoff, EStG, par. 49, Rdnr. E 293; Niedersächsisches Finanzgericht, Urteil vom 24 November 2004, Az. 9 K 147/00, EFG 2005, S. 766.

33 Same opinion OFD Frankfurt/M. v. 24 April 2012 – S 2257 A – 19 – St 218, ESt-Kartei par. 22 Karte 3.