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Italian Case Law News: Supreme Court decides on Taxation of Artistes

On September 10, 2007, the Italian Supreme Court delivered two decisions (n. 18973 and n. 18974) regarding the taxation of artistes. In both cases, the facts, the issue at stake and the conclusions of the Supreme Court are identical.

The facts concerned the payments that an Italian resident association – namely, "*Circolo Contromusica*" – made in consideration of the personal activities performed in Italy by a number of professional artistes resident in France, Germany and the United Kingdom.

In the cases at hand, the aforesaid payments were not made directly to the performing artistes, but were made to some non-resident companies for which the artistes worked.

Specifically the remunerations included both the payment for the artistes' performances and the payment for the non resident companies' services.

The Italian tax authorities contended that the remunerations paid for the performances of the artistes in Italy were taxable therein under Art. 17 of the double tax treaties signed between Italy and France, Germany and the United Kingdom respectively. Therefore, the Italian tax authorities assessed "*Circolo Contromusica*" (as tax agent) for not having withheld income taxes from the remunerations paid to the non-resident companies.

Conversely, "*Circolo Contromusica*" asserted that Art. 17 of the aforementioned treaties referred only to the income that non-resident artistes earned in Italy as *individuals* from their personal activities. Accordingly, since in the cases at issue the amounts were paid to non-resident *companies*, Art. 7 (business profits) of the treaties should apply and thus the remunerations could be taxed in Italy only if they were attributable to an Italian permanent establishment of such companies (which was not the case here). "*Circolo Contromusica*" hence contended to have acted correctly not withholding any tax from the payments made to the non-resident companies.

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Therefore **the issue** before the Supreme Court was whether the remunerations paid to foreign companies for the performances made in Italy by a number of non-resident artistes were subject to tax in Italy under Art. 17 of the double tax treaties between Italy and France, Germany and the United Kingdom, respectively.

Supreme Court Decision

First of all, the Italian Supreme Court observed that Art. 17 of the relevant treaties contains a provision drafted along the lines of Art. 17, paragraph 2, of the OECD Model Convention, which reads as follows:
"*Where income in respect of personal activities exercised by an entertainer or an athlete in his capacity as such accrues not to the entertainer or athlete himself but to another person, that income may,*

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notwithstanding the provisions of Articles 7, 14 and 15 of this Convention, be taxed in the Contracting State in which the activities of the entertainer or athlete are exercised".

The Supreme Court hence explained that the purpose of such provision is to confirm the principle that the amount paid for artistes' performances are always taxable in the contracting State where such personal activities have taken place, i.e. the State of source.

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1. On these grounds, the Italian Supreme Court - following the wording of art. 17, paragraph 2, of the OECD Model Convention - held that the amount of the total remunerations paid to the non-resident companies which referred to the artistes' performances in Italy was taxable therein. Therefore *Circolo Contromusica* should have withheld taxes from such amount.

As for this aspect, the Court remitted the case to the Second Instance Tax Court for determining the exact amount of the total remunerations paid by "Circolo Contromusica" that were subject to withholding tax in Italy.

2. On the other hand - added the Supreme Court - the amount paid for the services of the non-resident companies remained subject to tax only in the companies' States of residence, since those companies did not have a permanent establishment in Italy.

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