

**Overview of Finance Bill, 2024  
&  
Taxation of Non-resident  
Artistes or Sportspersons**  
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**Contents**

<b>Sl. No.</b>	<b>Particulars</b>
1	<b>Overview of Finance Bill, 2024</b>
2	▪ Direct Tax
3	▪ Indirect Tax
4	<b>Taxation of Non-resident Artistes or Sportspersons</b>
5	▪ OECD & UN Model Tax Convention framework
6	▪ India's Income Tax framework

# Overview of Finance Bill, 2024

# Direct tax

## 1. No substantial amendments have been proposed to direct tax laws

Announcement	Key points	Highlights
<b>Direct Tax Rates</b>	<ul style="list-style-type: none"> <li>No changes have been proposed in the Income tax rates including the amount of applicable Surcharge &amp; Cess.</li> <li>In other words, corporate tax rate continues to be 22% with surcharge of 10% and cess of 4% (as under Section 115BAA).</li> <li>Personal tax rates continue at slab rates as applicable for AY 2024-2025.</li> </ul>	 <p><b>No changes to corporate tax rates</b></p>
<b>Rates of Tax withholding</b>	<ul style="list-style-type: none"> <li>No changes have been proposed in the applicable tax withholding rates.</li> </ul>	

## 2. Sunset date of incorporation for new manufacturing company and cooperative societies

- For domestic companies, for lower basic tax rate of 25% in Tax year 2024-25, the base year for turnover less than INR 400 crore is shifted ahead by one year to FY 2022-23.
- Accordingly, a domestic company having turnover not exceeding INR400 crore in Tax year 2022-23 will be liable to basic tax rate of 25% in Tax Year 2024-25 (regardless of the quantum of turnover in Tax Year 2023-24 or Tax Year 2024-25).
- The sunset date of incorporation for new manufacturing company and resident cooperative societies to claim concessional tax rate has not been extended. In other words, No extension provided for domestic manufacturing companies for availing 15% concessional tax rate benefit.

### Highlights



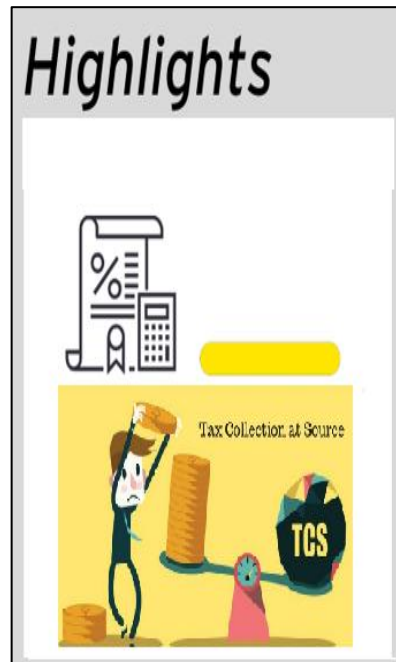
Sunset date of incorporation for new manufacturing company and cooperative societies

# Overview of Finance Bill, 2024 & Taxation of Non-resident Artistes or Sportspersons

3. **Tax Collected at source:** Proposed the following changes in the TCS regime for remittances under the Liberalised Remittance Scheme (LRS) and payments for overseas tour program package:

Particulars	Categories	TCS rate
Reduction in TCS rates for remittances/payments less than INR 7 lakh with retrospective effect from 01 July 2023	Remittances under LRS, other than for education and medical treatment	TCS rate reduced from 20 per cent to nil
	Payments for overseas tour program package	TCS rate reduced from 20 per cent to 5 per cent
Remittances/payments in excess of INR 7 lakh made effective from 01 October 2023	Remittances under LRS, other than for education and medical treatment	TCS rate 20 per cent
	Payments for overseas tour program package	TCS rate 20 per cent

The Finance Bill 2024 codifies the above announcements. Accordingly, the applicable TCS rates w.e.f. 1 October 2023 are:



Nature of Payment	TCS rate before Finance Act, 2023 <b>(Effective till 30 June 2023)</b>	TCS rate as amended by Finance Act, 2023 <b>(W.e.f. 01 July 2023)</b>	Clarification(s) through Press release dated 28 June 2023 <b>(W.e.f. 01 Oct 2023)</b>	Revised rates as per Interim Finance Bill, 2024 <b>(W.r.e.f. 01 July 2023)</b>
LRS for education financed by loan from a qualifying financial institution	No TCS upto INR 7 Lakhs 0.5% above INR 7 Lakhs	No change	No change	No change
LRS for medical treatment/ education (other than financed by loan from qualifying financial institution)	No TCS upto INR 7 Lakhs 5% above INR 7 Lakhs	No change	No change	No change
LRS for other purposes	No TCS upto INR 7 Lakhs 5% above INR 7 Lakhs	<b>20%</b>	<b>No TCS upto INR 7 Lakhs 20% above INR 7 Lakhs</b>	<b>No TCS upto INR 7 Lakhs 20% above INR 7 Lakhs</b>
Purchase of overseas tour program package (OTPP)	5%	<b>20%</b>	<b>5% TCS upto INR 7 Lakhs 20% above INR 7 Lakhs</b>	<b>5% TCS upto INR 7 Lakhs 20% above INR 7 Lakhs</b>

**Note – The threshold of INR700,000 is common for all LRS remittances and not for the individual category tabulated above.**


## 4. Withdrawal of historic tax demands

- Withdrawal of outstanding direct tax demands which are petty, non-verified, non-reconciled and disputed tax demand (**dating back to 1962**):

Up to Financial Year	Outstanding direct tax demands up to
2009-2010	INR 25,000
2010-2011 to 2014-2015	INR 10,000

- The above amendment is not captured in the Finance Bill and is expected to be rolled out through a separate Notification / Circular

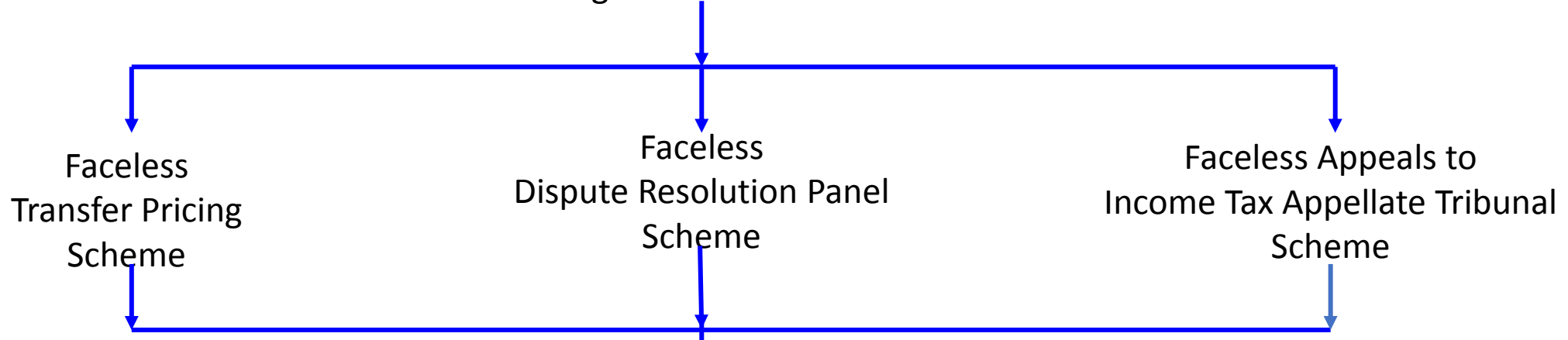
*Highlights*



Withdrawal of historic tax demands


## 5. Tax Administration

- Extension of deadline for introducing faceless schemes of



extended from 31 March 2024 to **31 March 2025**

*Highlights*



Tax administration

# Overview of Finance Bill, 2024 & Taxation of Non-resident Artistes or Sportspersons

## 6. Extension of sunset dates

- Sunset dates under the Income-tax Act, 1961 extended from 31 March 2024 to 31 March 2025 for the following:

Sl. No.	Provision	Criterion for which extension is granted
1	<b>GIFT IFSC (Exemption to Specified income)</b> Exemption to specified income earned by Investment division of non-resident International Financial Services Centre (IFSC) Banking Unit	Date of commencement of operations to claim exemption by Investment Division of Offshore Banking Unit in IFSC
2	<b>GIFT IFSC (Exemption of Royalty or Interest income)</b> Exemption of income of a Non-Resident (NR) by way of royalty or interest on account of lease of an aircraft/ship paid by a unit of an IFSC	Date of commencement of operations for IFSC unit to enable NRs to claim exemption on aircraft/ ship lease
3	<b>GIFT IFSC (Exemption of Capital Gain)</b> Capital gain exemption on transfer of leased ship/aircraft by a IFSC unit	Date of commencement of operations for IFSC Unit
4	<b>Sovereign Wealth Fund and Pension Funds</b> Exemption to Sovereign Wealth Fund (SWF)/Pension Fund (PF)/ wholly owned Subsidiary of Abu Dhabi Investment Authority (ADIA) on specified investments	Date for investment by SWF/PF/ subsidiary of ADIA for exemption
5	<b>Section 80-IAC(New eligible start-ups)</b> Deduction of 100% of profits of eligible start up from eligible business for a period of three consecutive tax years out of 10 tax years beginning from the tax year in which the eligible start-up is incorporated	Date of incorporation for eligible start-ups to claim deduction

**Note: Exemptions from certain safe harbour conditions applicable to eligible managers in GIFT IFSC where operations commenced prior to 31 March 2024 is not proposed to be extended.**

## Indirect tax

### 7. Introduction of penalty for not following special procedures

- Penalty provisions are proposed to be introduced for failure to register certain machines used in manufacture of specified goods (such as tobacco, pan-masala, hookah, khaini, snuff, etc.) as per special procedure.
- Section 122A has now been proposed to be inserted in the Central Goods and Services Tax Act, 2017:
  - ❖ Penalty of INR1 lakh per machine for non-registration. In other words, a penalty of INR2 lakh (INR1 lakh each under CGST and SGST Act) shall be payable for every machine not so registered.
  - ❖ Unregistered machines liable for seizure and confiscation
  - ❖ Confiscation not applicable if penalty is paid and registration is completed within 3 days from receipt of order of penalty.

#### Highlights



Penalty for  
not following  
special procedures

### 8. Distribution of ITC made mandatory through ISD mechanism

- The definition of ISD is proposed to be amended to mean an office which receives tax invoices for or on behalf of distinct persons and is liable to distribute the input tax credit in respect of such invoices.
- It is proposed to cover invoices for input services including those for services liable to tax under domestic reverse charge.
- An office receiving invoices for services for or on behalf of a distinct persons will be required to be registered as an ISD.
- The manner of distribution of credit by an ISD will be prescribed through the rules.
- The credit will be distributed by way of issue of a document containing the amount of input tax credit.

#### Highlights



ISD provisions  
revamped



# **Taxation of Non-resident Artistes or Sportspersons**



## 1. Extracts from OECD Model Tax Convention (MTC) , 2017

- **Article 17(1)** *Notwithstanding the provisions of Article 15, income derived by a resident of a contracting state as an entertainer, such as a theatre, motion picture, radio or television artiste, or a musician, or as a sportsperson, from that resident's personal activities as such exercised in the other contracting state, may be taxed in that other state.*
- **Article 17(2)** *Where income in respect of personal activities exercised by an entertainer or a sportsperson acting as such accrues not to the entertainer or sportsperson but to another person, that income may, notwithstanding the provisions of Article 15, be taxed in the contracting state in which the activities of the entertainer or sportsperson are exercised.*

## 2. Salient features OECD MTC, 2017 & UN MTC, 2021

MTC	Coverage	Right to tax	Notwithstanding other articles	Exemption from tax in India	Income Accruing to a person other than Entertainer/Sportsperson
<b>OECD</b>	Entertainer/Sportsperson	Source state	Article 15	Not available	Taxable in source state whether business profits or salary payments.
<b>UN</b>	Entertainer/Sportsperson	Source state	Article 7, 14, 15	Not available	Taxable in source state whether business profits or salary payments or contractor payments.

# Overview of Finance Bill, 2024 & Taxation of Non-resident Artistes or Sportspersons

## 3. Meaning of key terms

Particulars	Entertainer	Sportsperson	Athlete	Artistes
<b>Define under OECD Commentary</b>	Not defined	Not defined	The term 'Athlete' replaced by the term sportsperson	Not defined
<b>Dictionary meaning</b>	One who gives amusing performances professionally.	A game or an activity especially one involving physical exercise.	A person who is very good at sports or physical exercise, particularly one who competes in organized events.	An artiste is a person giving an artistic and entertaining performance directly or indirectly before an audience, regardless of the artistic or entertainment level
<b>Definition indicates</b>	There must be a <u>performance</u> which should be <u>in public</u> & can be <u>directly</u> before an audience or <u>recorded</u> & subsequently reproduces for an audience with main elements of the performance must be <u>entertaining</u> .	The term Sportsperson seems to cover any person involved in <u>physical or mental activity</u> that is exercised on the basis of predefined rules and in standard organizational forms specifically designed for it.	The term athlete is <u>not restricted to what are traditionally thought of as athletic event</u> (e.g., running, jumping, javelin throwing). It also covers, for example, footballers, golfers, jockeys, crickets and tennis plyers, as well as racing drivers.	Artistes seems to encompass more detailed <u>expressions of performing arts</u> , such as classical dance, music, theatre, etc.
<b>Illustrative examples- Person covered as Entertainer or Sportsperson or Athlete</b>	Stage performer, Film Actor, Actor including a former sportsperson in a television commercial, etc.	Participants in traditional athletic events such as runners, jumpers, swimmers, golfers, jockey, footballers, cricketers, tennis players, racing drivers, etc.	Acrobats, actors (theatre, television, radio), circus artistes, comedians, disc jockeys, magicians, singers, puppet theatre players, etc.	Magicians, musicians, puppet theatre players, etc.
<b>Illustrative examples- Person not covered as Entertainer or Sportsperson or Athlete</b>	Conference speaker, Model (Model presenting clothes during a fashion show or photo shoot), Administrative or Support staff (cameramen for a film)	Mountaineers, Scuba divers, Umpires, Referees, etc.	Authors, cameramen, architects, auctioneers, funeral orators, reporters, tour managers, writers, politician, photographers, journalists, etc.	Architects, anchormen (radio, television), Composers, producers, speakers at conferences , etc.

## 4. Scope of Article 17(1)

- a. the individual is a resident of one of the Contracting States,
- b. the individual is an artiste or a sportsperson,
- c. the individual derives income as an artiste or sportsperson from personal activities,
- d. such personal activities are exercised in the other Contracting State,

If these conditions are satisfied, income derived through such [personal activities may be taxed in the other contracting state](#).

- Following determinative factors determine any income 'closely connected' to performance

Factor 1: Timing of the income-generating event	Factor 2: Nature of the consideration for payment of the income
For instance, a payment is received by a professional golfer for an interview given during a tournament in which he participates.	For instance, a payment made to a star tennis player for the use of his picture or advertising a tournament in which he will participate.

## 5. Scope of Article 17(2)

- a. Income arises in respect of personal activities exercised by an artiste or a sportsperson as contemplated under article 17(1) of OECD MTC.
  - b. However, income accrues to another person and not to the sportsperson himself.
- There are three main situations when the income from personal activities of the artistes or sportspersons accrues to another person

Situation I	Situation II	Situation III
A management company which receives income for the appearance of, for example, a group of sportspersons which is not itself constituted as a legal entity.	A team, troupe, orchestra, etc. which is constituted as a legal entity. While the individual performers will be liable to tax under article 17(1) on any income derived from the performance of these activities, the profits element accruing from the performance to the legal entity would be liable to tax under article 17(2).	A star companies where remuneration for the performance of artistes or sportspersons is not paid to the artistes or sportspersons himself but to another person in such a way that the income is taxed in the state where the activity is performed neither as personal service income to the artistes or sportspersons nor as profits of the enterprise, in the absence of a permanent establishment. Where a performance takes place in such a country, Article 17(2) permits it to impose a tax on the profits diverted from the income of the artistes or sportspersons to the enterprise.

## 6. Scope of Article 17 (1) under OECD MTC & UN MTC

Under UN MTC	Under OECD MTC
<ul style="list-style-type: none"> <li>It starts with 'Notwithstanding the provisions of Articles 14 and 15'.</li> <li>Artistes and sportspersons who are residents of a contracting state may be taxed in the other contracting state in which their personal activities as such are performed, whether these are of a business nature, or of the nature of technical services or of independent or dependent personal services.</li> </ul>	<ul style="list-style-type: none"> <li>It starts with 'Notwithstanding the provisions of Article 15'.</li> <li>Artistes and sportspersons who are residents of a contracting state may be taxed in the other contracting state in which their personal activities as such are performed, whether these are of a business nature, or employment nature.</li> </ul>
<ul style="list-style-type: none"> <li>This provision is an exception to the rules in Articles 7, 12A and 14 and to that in paragraph 2 of Article 15, respectively.</li> </ul>	<ul style="list-style-type: none"> <li>This provision is an exception to the rules in Articles 7 and to that in paragraph 2 of Article 15, respectively.</li> </ul>

## 7. Interplay of Article 17(1) and Article 17(2)

### Article 17(1)

- Targets taxation of personal performances by artistes and sportspersons as the legal entities are not capable of carrying out artistic or sporting activities personally, in other words, enables taxation of income where the beneficial owner is the artiste or sportsman himself.

### Article 17(2)

- Deals with situations where performances are offered through an intermediary to a resident of another state, in other words, permits source taxation regardless of whether or not the artiste or sportsman himself receives any payments.

## 8. Limited or unlimited approach under Article 17(2)

1. The approach of Article 17(2) was made unlimited, making all payments to any third party for the performance of artistes and sportspersons taxable in the source country.
2. US Model commentary provides that Article 17(2) should not apply:
  - a. when the artistes or sportspersons are not shareholders and do not receive bonus payments or profit shares from a third company.
  - b. if it is established that neither the performer nor any persons related to the performer, participates directly or indirectly in the receipts or profits of the person providing performers services.
3. The said unlimited approach has encounter the following problems:
  - a. risk of excessive taxation where the performer and the intermediary are completely independent persons,
  - b. leads to a distortion of international competition because domestic artistes and sportspersons, who do not experience excessive taxation, are better off than foreign artistes and sportspersons,
  - c. risk of tax credit problems,
  - d. high administrative costs when compared with the earnings.

# Overview of Finance Bill, 2024 & Taxation of Non-resident Artistes or Sportspersons

## 9. Situation when Article 17 not apply

### Article 17

- Article 17 would not apply whenever there is no close connection between the income and the performance of activities in the country concerned.

### Article 17(2)

- The income derived by the independent promoter of a concert from the sale of tickets and allocation of advertising space.
- Prize money that the owner of a horse or the team to which a race car belongs derives from the results of the horse or car during a race or during races taking place during a definite period. Such prize money is not derived from the personal activities of the jockey or race car driver and is not covered by Article 17.

## 10. Exception to Article 17

- Some of the OECD countries contains Article 17(3) which allows exemption by the source state of performance income of artistes or sportspersons for performances that are supported by public funds. In that situation only the residence country has the right to tax performance income.
- This exception leads to unequal treatment of subsidized cultural and sports institutions, on the one hand, and commercial artistes and sports companies, on the other hand.
- India's position on Article 17(3), India has reserved the right to exclude from the application of Article 17(1) and Article 17(2), performance income of artistes or sportspersons for performances that are substantially supported by public funds, thereby providing residence-based taxation of such income.

# Overview of Finance Bill, 2024 & Taxation of Non-resident Artistes or Sportspersons

## 11. Certain income earned by an artistes or sportspersons

Sl. No.	Income category	Fall <b>outside</b> the scope of the Article 17 of OECD MTC	Fall <b>under</b> the scope of the Article 17 of OECD MTC
1	Income received by impresarios	Beyond the scope of the Article 17.	Receive on behalf of the artistes or sportspersons.
2	Sale of merchandising	Royalty income can fall under Article 12 or business income under Article 7 or Article 15 in the case of an employee receiving such income	When the personal performance of artistes or sportspersons in the venue, leading to the sales of the merchandising.
3	Subsidies given to artistes	-	Direct link with a performance
4	Tour support from record companies	-	Tour support from the record companies is paid as an advance
5	Royalties for intellectual property rights	Covered by Article 12	Advertising or sponsorship income which has a close connection with a performance in a given state
6	Player transfer fee	For the purpose of preventing a sportsperson from joining another leagues	For future entertainment events
7	Neighbouring rights	Considered as royalties as there is no link between performance.  Considered as royalties which seems to be a good practical solution.	Seen as deferred compensation for an earlier performance
8	Income from single event	-	Single event such as interviews or advertising in that state that are closely connected with such an appearance



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Sl. No.	Income category	Fall <b>outside</b> the scope of the Article 17 of OECD MTC	Fall <b>under</b> the scope of the Article 17 of OECD MTC
9	Guarantee fees paid to overseas sports association	Considered as other income	If in relation to any match played in the country of performance
10	Persons involved in mixed activities	If the performing element composes a nugatory part of the overall activity	If the activities are predominately of performing nature
11	Payments towards inducement	Inducement payments are made to persuade an artiste to be available to perform during a certain period with no clear artistic or entertainment activity identified	-
12	Payments towards options	-	A clear link between the option payment and the future artistic or entertainment activity
13	Payments towards retainers	No artistic or entertainment proceedings in the country is requested from the artiste.	-
14	Payments towards restrictive covenants rights	Payments are qualifying as royalties and falling under Article 12	-
15	Cancellation of performance and insurance cover	no connection with the actual performance no connection with the actual performance and fall under Articles 7 or 15	
16	Preparation, rehearsal and training	-	Income pertaining to rehearsal, preparation and training shall be taxable irrespective of whether the specific performance is taking place in that state or not

# Overview of Finance Bill, 2024 & Taxation of Non-resident Artistes or Sportspersons

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Sl. No.	Income category	Fall <b>outside</b> the scope of the Article 17 of OECD MTC	Fall <b>under</b> the scope of the Article 17 of OECD MTC
17	<p>Pensions and other insurance benefits</p> <p>a. Pensions schemes from employment</p> <p>b. Deferred payments for early retirement</p> <p>c. Personal pension schemes</p> <p>d. Other insurance benefits</p>	<p>Fall under Article 18-Pensions from employment or Article 19(2)-Pensions from governments.</p> <p>-</p> <p>Fall under Article 21 and the taxing right for the personal pension income is then allocated to the country of residence.</p> <p>There is no link with specific performances, the insurance benefits cannot fall under Article 17 but will fall under Article 7 for self-employed artistes or Article 15 for employees or Article 19 for governmental insurance benefits or Article 21 in other situations, as appropriate</p>	<p>-</p> <p>These special arrangements have indirect link with the performances to make the deferred payments taxable in the country of performance as per Article 17.</p> <p>-</p> <p>-</p>
18	Interviews and appearance on shows	-	Closely connected with the personal activities of the athlete and even fees for granting interviews
19	Owner of a racehorse or race team	When the price money is not paid in consideration for the personal activities of the race car driver but in consideration for the activities related to the ownership and training for the horse or the design, ownership and maintenance of the car.	When owner or team receives a payment in consideration for the personal activities of the race car driver

# Overview of Finance Bill, 2024 & Taxation of Non-resident Artistes or Sportspersons

## 11. Certain income earned by an artistes or sportspersons

Sl. No.	Income category	Fall <b>outside</b> the scope of the Article 17 of OECD MTC	Fall <b>under</b> the scope of the Article 17 of OECD MTC
20	Payments towards options	-	A clear link between the option payment and the future artistic or entertainment activity.
21	Image rights	Merely for the exploitation of his or her personality.	When the uses of their image rights are closely connected with their performance or personal activity in the given state.
22	Broadcasting	Not benefit the performer or the payment is not related to the personal activities of the performer.	Payments for broadcasting directly to the performer or for his or her benefit to star company of the performer.
23	Sponsorship, advertisement, endorsement	Where the product to be endorsed is to be worn in general while he or she is not performing.	When related directly or indirectly to performances or appearances in a given state.

## 12. Tax treatment of Team Income

Type-I	Type-II	Type-III
Indirect payments to performers	Income in respect of performance	Non-performance profit of the team
<ul style="list-style-type: none"> <li>▪ <b>Covered under Article 17(2):</b> When artistes or sportspersons indirectly receive income from the team which is for the performance with such team than in such case, the contracting state of performance apply the similar taxation rights as if the compensation had been paid directly to individual performers.</li> <li>▪ Therefore, the event organizer applies Article 17 and relevant provisions of domestic law regarding income of artistes and sportspersons to an appropriate part of the payment to the team attributable to individual performers.</li> <li>▪ <b>Derived from personal exercise:</b> It is crucial to determine the extent to which a payment made to the team includes income indirectly derived by performers and resulting from personal exercise of artistic or sporting activities, because only such income may be subject to tax under Article 17(1) of the OECD MTC.</li> </ul>	<ul style="list-style-type: none"> <li>▪ <b>Covered under Article 17(2):</b> Income from performance that is attributable to the team itself rather than individual performers, Article 17(2) expressly takes precedence over Article 7 but only with respect to the profit element of the team relating to entertainment activities in the contracting state of performance.</li> <li>▪ <b>Double taxation:</b> The income derived in respect of the personal activities of an artiste or sportsperson should not be doubly taxed through the application of these two paragraphs. Alternatively, tax the income received by the team but allowing a deduction for the relevant part of the remuneration paid to individual performers and taxing that part in the hands of the performers.</li> </ul>	<ul style="list-style-type: none"> <li>▪ <b>Not covered under Article 17(2):</b> The profit element of the team unrelated to the personal exercise of entertainment or sports activities by team members in the source country is not subject to tax under Article 17(2).</li> <li>▪ <b>May be covered under Article 7:</b> Consequently, may be taxed in the state of activity only if the team has a permanent establishment in this state to which this income is attributable.</li> <li>▪ <b>Combined Fee:</b> In the case where the team receives a single fee, apportionment may be necessary.</li> </ul>

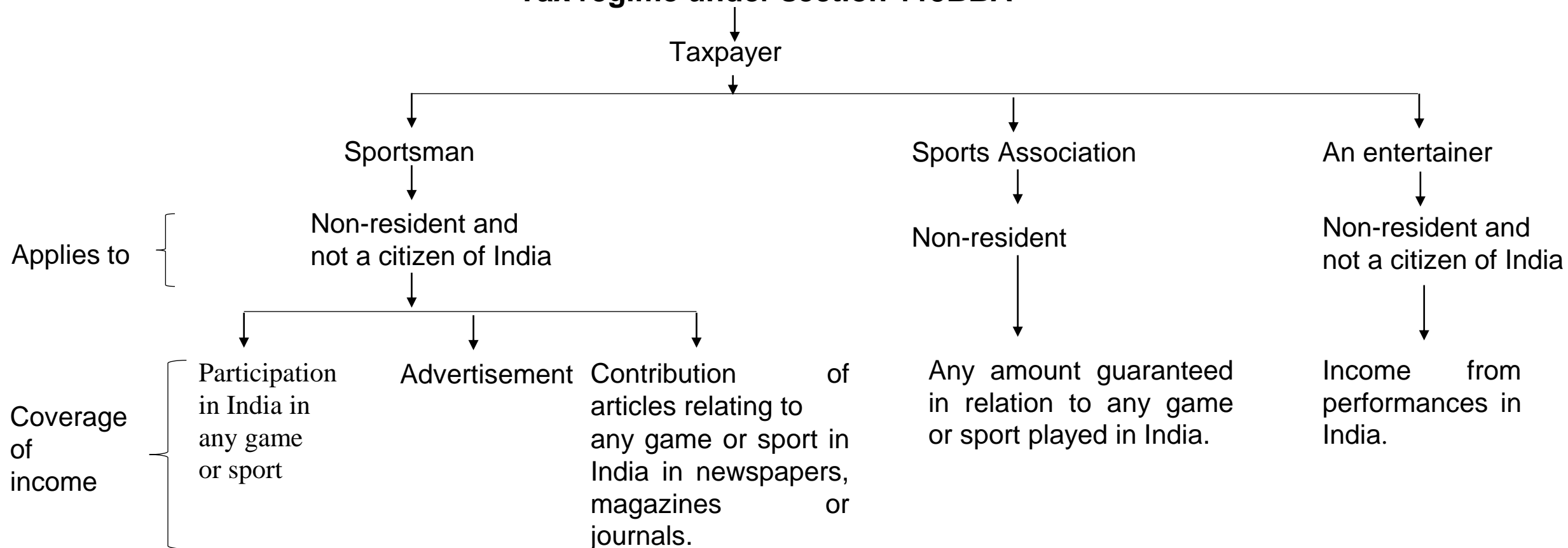
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## 13. Tax treatment of Team member Income

Taxation of Employee		Taxation of independent contractors	
Performing Employee	Non-performing Employee	Performing independent contractors	Non-performing independent contractors
<ul style="list-style-type: none"> <li>▪ <b>Benefits of Article 15 not available:</b> Employment income derived from personal activities of artistes or sportspersons in their capacity as such is covered by Article 17 rather than Article 15 and exceptions provided for in Article 15 do not apply.</li> <li>▪ The critical factor is their services rather than the legal basis on which such services are rendered.</li> <li>▪ <b>Income linked to public performance:</b> OECD commentary does not provide that what income should be considered linked to performances. A commonly accepted interpretation restricts Article 17 to public performances.</li> <li>▪ There could be 2 types of training activities:(1) Those without an audience and without a direct link to a performance. (2) Those relating to a performance or appearance for an audience. The former would be covered with under Article 15 and the latter under Article 17.</li> <li>▪ <b>Allocation rules:</b> Items of income directly linked to specific activities exercised by the artistes or sportspersons in a state will be considered to be derived from the activities exercised in that state.</li> <li>▪ <b>Combined Cases:</b> Where the same individual is both an actor and director in one show. If his activities in that contracting state are especially of a performing nature, Article 17 will apply to all the resulting income he or she derives in that state. If the performing element is insignificant part, the whole of the income will fall outside this provision.</li> </ul>	<ul style="list-style-type: none"> <li>▪ <b>Benefits of Article 15 available:</b> Income of a non-performing employee is taxable in the source state if the artistic or sports event requires presence in that country or if the employer has a permanent establishment in that contracting state which pays the remuneration to the employee.</li> <li>▪ The thresholds provided for in Article 15 ensure that an employee is not taxable in the state of performance if he or she is present there only for a short period of time and non-performing employee is employed by an entity which is not subject to tax in the source country.</li> </ul>	<ul style="list-style-type: none"> <li>▪ <b>Benefits of Article 7 not available:</b> Article 17 provides that income from independent services derived by such a performer is not taxable under Article 7 and it is taxable under Article 17.</li> <li>▪ Consequently, it is irrelevant whether the performer has a permanent establishment in the source country or not.</li> <li>▪ Further, Income from artistic or sporting activities is taxable in that state without regard to thresholds required for taxation of business profits.</li> <li>▪ <b>Gross basis taxation:</b> The taxpayer cannot benefit from net basis taxation and in most cases, the tax is charged on gross payments received from the organizer or from the team.</li> </ul>	<ul style="list-style-type: none"> <li>▪ <b>Benefits of Article 7 available:</b> A non-performing member of an artistic or sports team performed on a self-governing basis is not taxable on his income in the source country as long as he has no permanent establishment there.</li> <li>▪ If non-performing member performed in that contracting state wherein he has the permanent establishment than his or her profits may be taxed in the performing source state but only so much of them as is resultant to that permanent establishment.</li> <li>▪ Thus, an independent non-performing contractor are covered under Article 7.</li> <li>▪ <b>Net basis taxation:</b> The taxpayer can benefit from net basis taxation.</li> </ul>

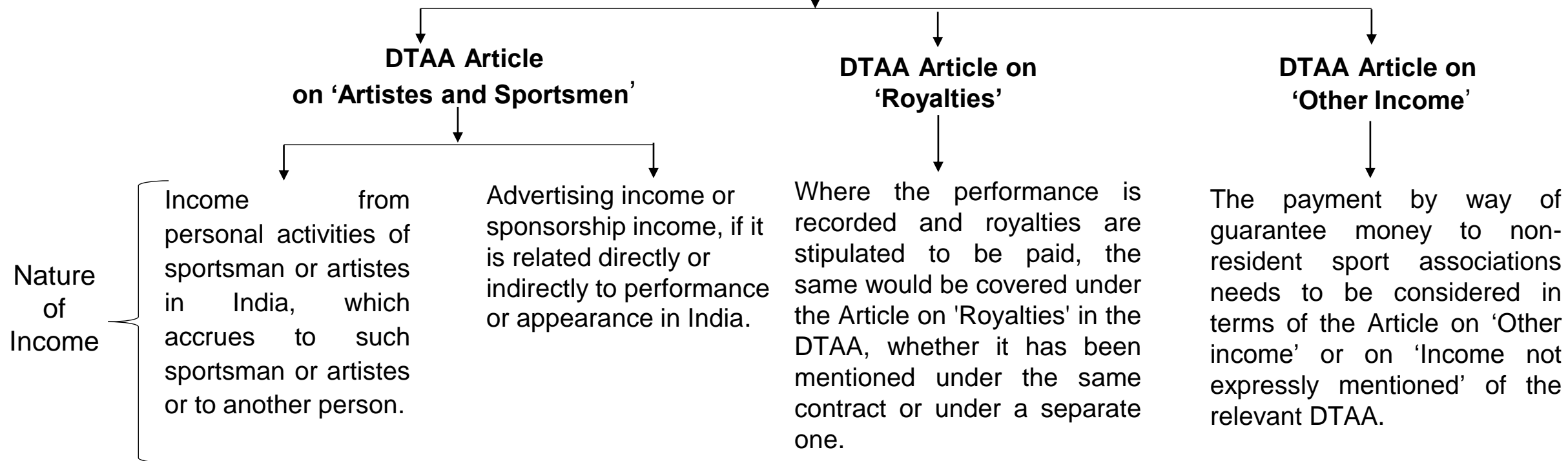
## Income Tax Act 1961

### Tax regime under section 115BBA



- Any expenses shall not be allowed as deduction.
- Section 115BBA provides for a gross basis of taxation for specified incomes earned by non-resident sportspersons and entertainers from India at rate of 20% plus applicable surcharge and health and education cess.
- Section 115BBA is merely a computational provision and not a charging one.

## Classification of nature of income under OECD MTC



Nature of Income	Taxability in India	
	Yes	No
Performance in India gratuitously without consideration	-	✓
Performance in India for no consideration, to promote sale of records	-	✓
Consideration paid to acquire the copyrights of performance in India for subsequent, sale, broadcast or telecast abroad	-	✓
Consideration for live performance or simultaneous live telecast or broadcast in India consideration paid to acquire the copyrights of performance in India for subsequent, sale, broadcast or telecast in India	✓	-
Endorsement fee (for launch or promotion of products, etc.) that relates to the performance in India	✓	-

## Withholding tax under India's domestic framework

### Mechanism for computing Income

- The Article 17 of OECD MTC says nothing about how the income in question is to be computed. It is for a contracting state's domestic law to determine the extent of any deductions for expenses.

### Rationalization of provisions of withholding tax

- Section 194E provides that where any income referred to in section 115BBA is payable to a non-resident sportsman including an athlete or an entertainer who is not a citizen of India or a non-resident sports association or institution, the person responsible for making the payment shall deduct income-tax thereon at the rate of 20% at the time of credit or payment of such income to the account of the payee, whichever is earlier.

### Compliance requirements

- No return is required to be filed if the total income of such non-resident consists solely of the income referred to in section 115BBA and taxes thereon withheld under the Income Tax Act, 1961 as per Chapter XVII-B.
- A tax clearance certificate is required to be obtained by non-resident performer from the tax authorities prior to departure from India as per provision of section 230 of the Income Tax Act, 1961. Section 115BBA(2) of the Income-tax Act, 1961.



# Overview of Finance Bill, 2024 & Taxation of Non-resident Artistes or Sportspersons

## Different approach for certain terms under OECD MTC, UN MTC and India domestic tax law

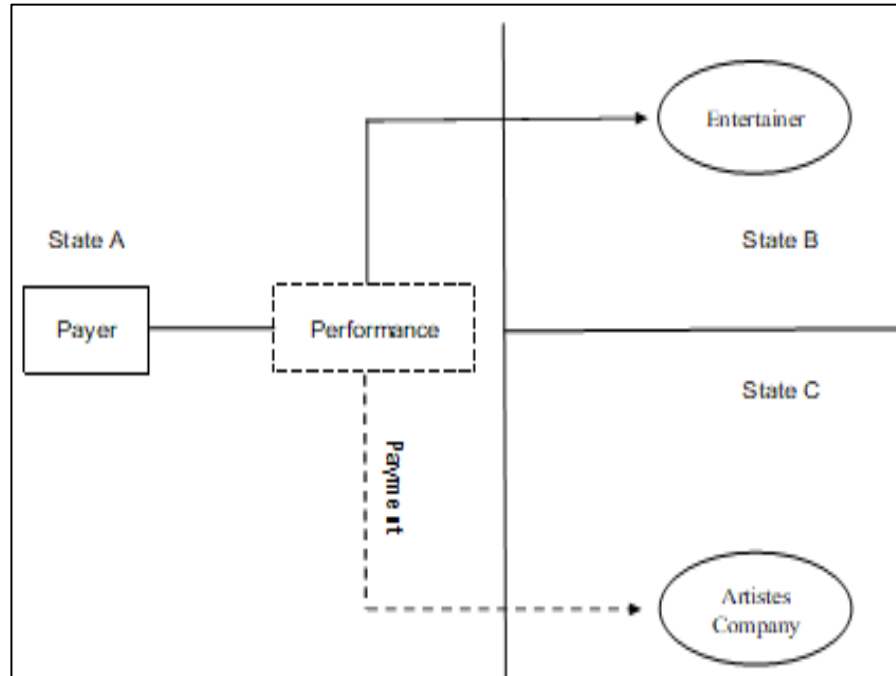
Areas	Article 17 of OECD & UN MTC, 2017	Section 115BBA of the Income Tax Act, 1961		
<b>Persons covered</b>	<ul style="list-style-type: none"> <li>Covers only individuals i.e., sportsperson and artistes.</li> <li>It includes all other persons but only to the extent of such income that accrues to them on account of the personal activities of the individuals.</li> </ul>	<ul style="list-style-type: none"> <li>Sports associations are covered in relation to the sports played in India.</li> </ul>		
<b>Incomes covered</b>	<ul style="list-style-type: none"> <li>Covers income from all 'personal activities' of the artiste or sportsperson.</li> </ul>	<ul style="list-style-type: none"> <li>Covers the specific streams of incomes such as:</li> </ul>		
		<b>Taxpayer</b>	<b>Applies to</b>	<b>Coverage of income</b>
		Sports-person	Non-resident and not a citizen of India	Income by way of participation in India in any game or sport, advertisement, contribution of articles relating to any game or sport in India in news-papers, magazine or journals.
		Sports Association	Non-resident	Income by way of any amount guaranteed in relation to any game or sport played in India.
		Entertainer	Non-resident and not a citizen of India	Income from performances in India.
<b>Gross basis vs. Net basis taxation</b>	<ul style="list-style-type: none"> <li>Only right to tax is allocated by virtue of Article 17 &amp; the mode of computation of the income is left for the contracting states to deal as per their domestic law.</li> </ul>	<ul style="list-style-type: none"> <li>Denying any deduction to the non-resident performer and taxing the income on a gross basis.</li> </ul>		

## Limitation & problems following from Article 17

- International excessive taxation which leads to double taxation;
- The country of performance levies tax on gross taxation basis whereas the country of residence only allows a tax credit on the net income basis;
- Difficult to obtain the credit of taxes in the residence country;
- Few countries do not qualify the foreign tax for a tax credit;
- Where the country of performance has not issued a tax certificate than in such a case there is no proof for the tax authorities in the residence country about the source tax;
- When the tax certificate is in the name of the team and the tax credit requires to be obtained by the individual artistes or sportspersons;
- Tax authorities in both the countries (residence state as well as source state where the performance takes place) to audit whether the tax filings have been correct;
- There is no guidance in Article 17 of the OECD MTC regarding the tax base, tax rate and form of collecting tax;
- There are no rules on the deduction of expenses;
- There is not specific guidance on attribution of income to past or future performances other than the general criterion of ‘closely connected’;
- There is no guidance on the allocation of specific payments such as transfer fees, prizes, signing bonus, guarantee fee, etc. relating to work performed or to be performed over indefinite periods of time;
- Non-discrimination issues particularly withholding taxes for non-resident artistes and sportspersons in the light of Article 24 OECD MTC;
- Increase in administrative work and compliance costs.

## Specific issues

### Triangular situation



### Problems in triangular situation

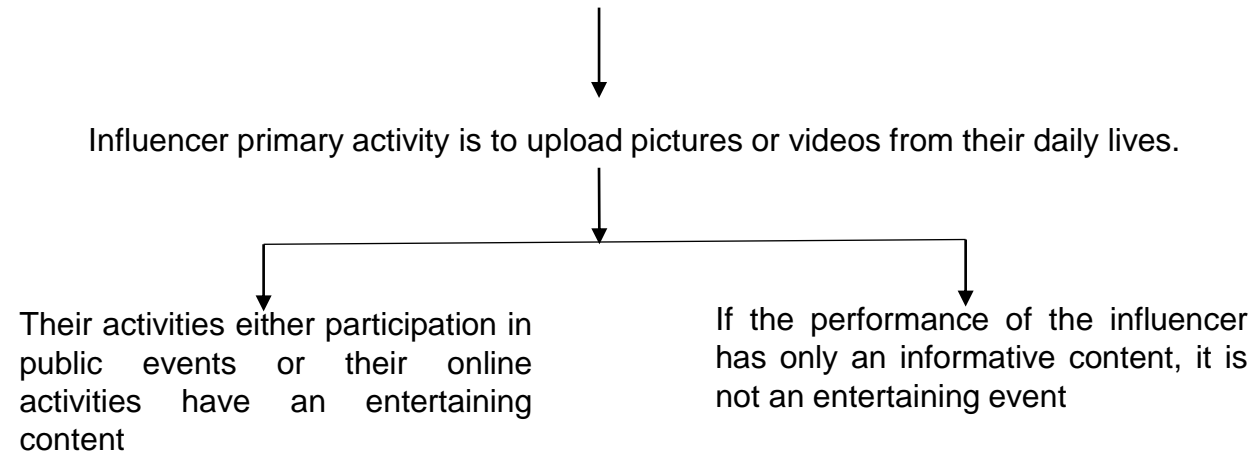
#### Double taxation

When performance contract drawn up between the organizer and the artistes company, while the artiste lives in another country and organizer is forced to 'look through' the artistes company and tax the artistes directly, it can happen that the residence country of the artistes will not allow a tax credit because the artistes was not a partner to the contract which resulted into double taxation .

#### Tax credit

If the artiste company is involved in the agreement between the artiste and the organizer of the performance and the three parties are based in different countries, a tax credit problem can arise for either the artiste or the third party, or even for both.

### Influencer income



### Virtual influencer (Esther Olofsson)

which does not exist in the reality

Clearly be business profits under Article 7

# Overview of Finance Bill, 2024 & Taxation of Non-resident Artistes or Sportspersons

## Specific issues

### Performance in multiple geographics event

### Production expenses for a performance

An element of income which is closely connected with specific activities exercised by the artistes or sportspersons in a state will be considered to be derived from the activities exercised in that state

Where the remuneration received by the artistes or sportspersons employed by a team covers various activities to be performed during a period of time and it will be appropriate to allocate that salary or remuneration on the basis of the working days spent in each state in which the artistes or sportspersons has been required under his or her employment contract to perform these activities

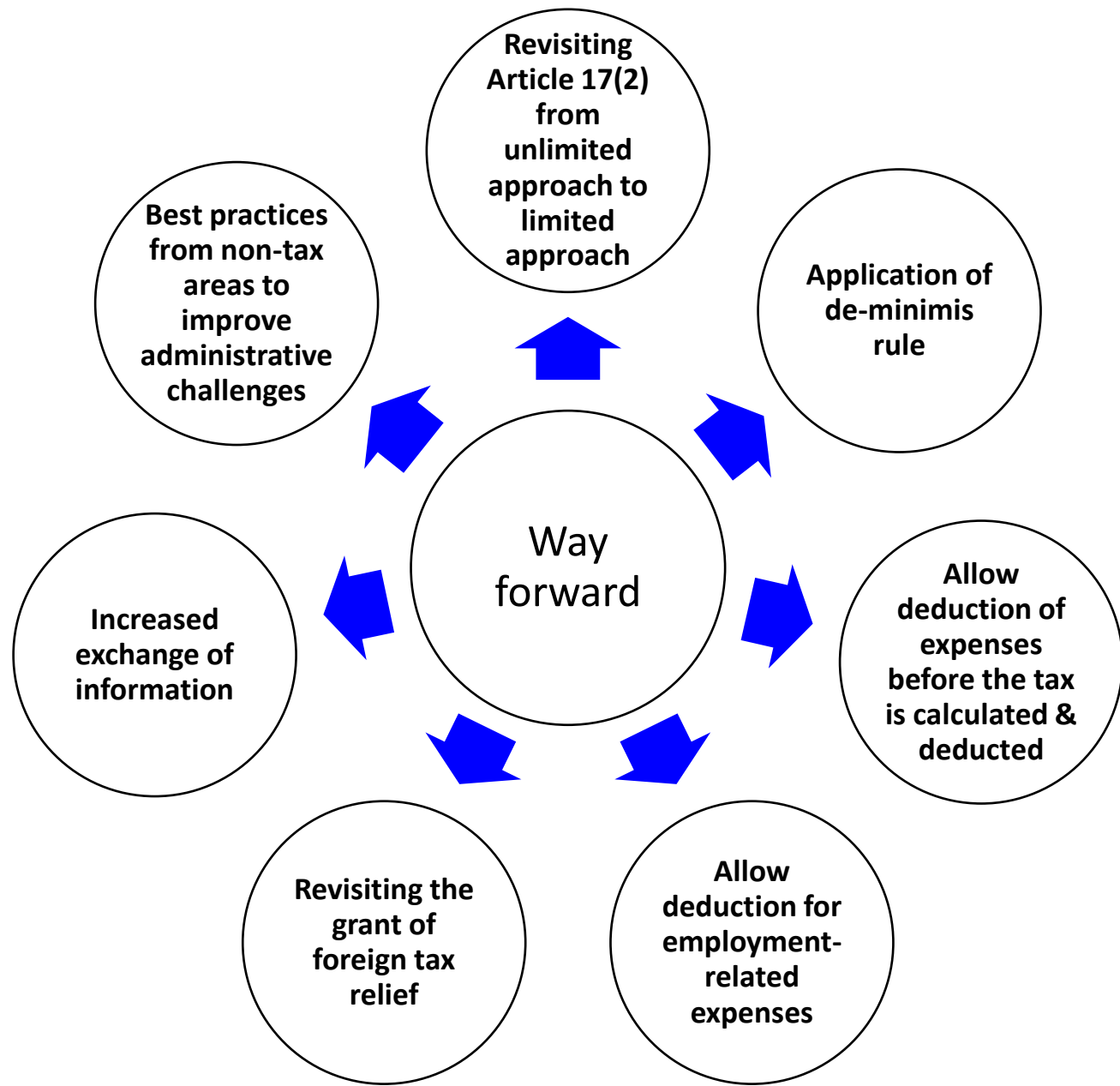
Value of the services contracted by the performance organizer but to be used by the artiste has to be added to the artiste's fee to compute the taxable performance fee

Payments by the organizer of a performance directly to people other than the artiste are not taxable as performance income, as these expenses are borne on behalf of the organizer and not on behalf of the artiste

## An alternative prescribed by OECD to restrict the scope of Article 17

Option	Particular	Paragraph number Commentary on Article 17	Explanation
1	Article 17 only for self-employed, normal rules from Article 15 for employees	2	OECD commentary has given the option to the contracting states that they can decide in their bilateral tax treaty to restrict the Article 17(1) to business activities. To meet this requirement, it would be sufficient to replace the words 'notwithstanding the provisions of Article 15' by 'subject to the provisions of Article 15' in paragraphs 1 and 2.
2	Deduction of expenses	10	Two choices have been mentioned in paragraph 10 to Article 17 commentary. Choice 1: Taxation of the gross performance fee but a low tax rate. Choice 2: The deduction of expenses and taxation under the normal rules.
3	De-Minimis-Rule of 15,000 international monetary fund (IMF) special drawing rights (SDR)	10.1 to 10.4	Under the 3rd option, minimum amount of 15,000 IMF SDR per performer per year, under which the performance country does not have the right to tax the performance income.
4	Support from public funds	14	Under 4th option, excludes the performances supported from public funds from Article 17.
5	Foreign teams & groups	14.1	Under 5th option, an exemption to foreign teams and groups working with performers as employees. Further, paragraph 14.1 provides a text proposal in which the exemption is available to cross-border competitions only.

Many complications with the taxation of non-resident artistes or sportspersons can be circumvent with measures which are already available





**Thank you**

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