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## **Withholding Tax on Cross-Border Rights and Royalty Flows**

The following briefing outlines *PRS for Music's* interest in the taxation of copyright royalties arising from licensing and management of rights, and more specifically the issues of withholding (income) tax on cross-border rights and royalty flows both in and out of the UK within the EU and also between the UK and non EU countries. Under consideration is the operation of the withholding tax system and rules in the UK for copyright royalties collected in the UK on behalf of rightsholders abroad. We seek to understand how improvements to the system could reduce compliance costs and delay in processing and administration for agents managing rights, including collecting societies, and the operation of withholding tax rules across the EU for cross-border licensing and administration of IP rights to digital platforms operating on a multi-territory basis. We would like to see what steps could be taken to:

- a. reduce the exposure to irrecoverable losses;
- b. remove the barriers that the current systems poses to the speed and flow of royalties into the UK for resident and national songwriters and composers;
- c. consider how changes in the operation or transparency of the cross border tax rules could assist with the development of improved copyright licensing solutions for digital services;
- d. Level the playing field for individual rightsholders, SMEs and their agents with larger companies who needs have been addressed through directives at the European level.

In 2009, the total net value of rights collected for the use of our members' works by our partner collecting societies was in the region of £415m. Royalty payments are made by our collecting society partners to the local sub-publisher of the musical work, so approximately 50% of the income stays overseas. Deductions from the net royalties due to our writer members are made for costs of administration. The collecting society will also deduct tax from royalties due to be sent to us, in accordance with the rules and any bi-lateral treaty between their member state and the UK. In the UK itself *PRS for Music* paid approximately £3.5M in respect of royalties collected here for songwriters resident outside the UK. Once royalties are paid by us to our members they will make a recovery of that tax withheld, to the extent they can, as part of their income taxation in the UK

We would suggest that there could be benefits to the UK in addressing this for our sector. Specifically, this is a factor which could help increase the competitiveness of the UK as a choice for location of rights management businesses, over locations which are currently tax neutral or tax effective.

We are also aware withholding tax issues also challenge other creative industries, which sell and license widely into markets across the world. The UK economy could benefit from the simplification of rules in the UK and also from addressing the bottlenecks and costs associated with the taxation of royalties due to creators in the UK. This would correspondingly help support the fiscal potential of the UK's creative sector.

## **UK issues**

Our songwriters, composers, and music publisher members deal everyday with the processes of dealing with tax withheld at source on royalties earned overseas and the administration of managing taxes for accounting purposes. Income tax withheld at source in another country can be claimed back but that incurs compliance costs and delays, complex administration to deal with multiple different systems across the EU and, if appropriate taxation treaties are not in place, exposure to double taxation. The music business is heavily made up of individuals and SME's who cannot benefit from the cross-border transfer exemptions of the Royalties Directive.

The international success of British music industry and its strength as an export means that these problems are more acute for them in Europe than perhaps for residents of other countries. The UK may actually be more adversely affected by Withholding Tax problems given the fact we are a net exporter of music rights - tax withheld in other countries is greater than that withheld by the UK. Moreover, UK tax is also reduced more by the claims for double taxation relief by our members. It is also worth highlighting that the number of individuals and SME's all exposed to these problems also means the issue is widespread and that it disproportionately affects such a constituency.

**A solution may involve developing bi-lateral treaties double taxation agreements where they do not currently exist, and a reduction to zero of any retention even where such Treaties do exist.**

## **EU issues**

Currently in Europe copyright royalties are collected under licences which are effective in multiple markets, and tax potentially withheld in each market, can offer significant costs and burdens in dealing with different rules for each revenue office in different markets. The complication of the process involves administration in both collecting societies for the collective management of rights, as agents for their members, and digital service providers. There is also a significant risk of non-recoverable tax deduction occurring when an agent acts on behalf of rightsholders in a third country. We have made these representations to the Commission, direct and through GESAC which is our representative body in Brussels, as part of the discussion on creating a digital single market and through input direct to the review of the Royalties and Interest Directive.

We also note with interest that the Monti Strategy for the Single Market identified the tax system as a barrier to the success and speed of delivering the single market, and specifically highlighted this in connection with the digital agenda. We are also aware of the European Commission's recent Communication on removing cross-border tax obstacles, which sets out a work plan for 2011-12 and seems to address some of these concerns faced by EU citizens directly.

Withholding taxes present a major obstacle to cross border licensing, which we can identify as resulting from shifts to multi-territory licensing, from structural changes in the collective management of rights and lastly from divergence of the interpretation and application of tax rules by different member states. All of the industry changes can be attributed to the rapid adaptation of the market and organisation of rights to online services and use of music.

1. There has been a shift from territorial licensing of rights to multi-territorial licensing has increased the risks of exposure of individual creators to double taxation;
2. To adapt to online music services, there is considerable structural change underway in collective management of rights, designed to deliver more effective collective

management solutions to digital services and to respond to the European Commission Recommendation on collective management of online music rights which encourages right holders to appoint a rights manager for their rights on a pan-European basis. The tax consequences of this is that there is now triangulation (between the location of the service provider, the location of the licensor and the location of the ultimate rightsholder) which was not contemplated in the current framework of withholding tax. Therefore the benefits of mitigation by double taxation treaties are lost and the songwriter is subjected to double taxation;

3. Most tax jurisdictions use the concept of 'beneficial ownership' when considering whether a licensor holds the rights as owner or agent. A pan European aggregation of rights is more likely to be set up on an agency basis than an ownership basis, but there are serious tax issues arising from this.

**We take the view that given these aforementioned challenges, UK Government should consider specific fiscal policy measures which support the competitiveness of the UK as a conducive business environment for the provision of multi-territory licensing services.**

## **Conclusions**

As one can see from the above, there are now significant complexities in both establishment of rights management structures and compliance issues and costs which we would like to see simplified in order to assist the development of new licensing models appropriate to the digital market.

*PRS for Music* seeks to become a key hub for rights to be located in a competitive European market and in consequence we believe that onerous withholding tax rates, processes and rules do not support such a future ambition; rather they impede the development of models for collective multi-territorial licensing of music rights and subsequently increase their cost.