Boulez v. Commissioner
83 T.C. 584 (1984)

Payments for Personal Services or for Royalties?

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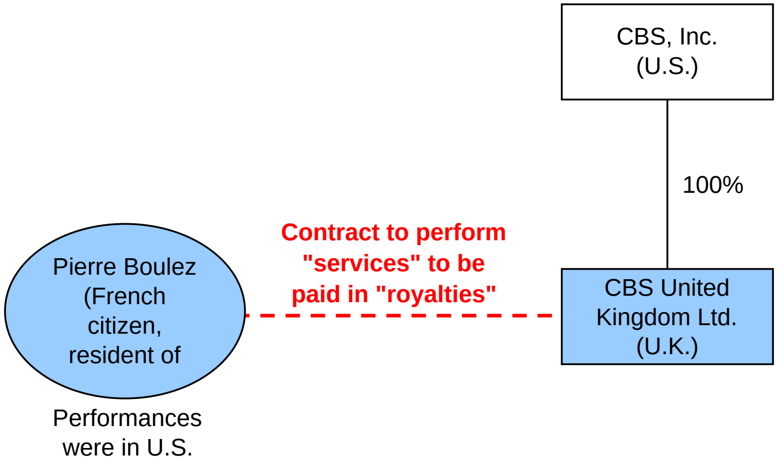

The issue in the case was whether certain payments received by Pierre Boulez ("Boulez") in 1975 constituted "royalties" or "compensation for personal services". If the payments were characterized as royalties, then the payments were exempt from U.S. tax under the U.S.-German Income Tax Treaty. If the payments were characterized as compensation for personal services, then the payments were subject to U.S. tax.

Boulez, a renowned music director and orchestra conductor, was a citizen of France and was a resident of Germany in 1975. Boulez entered into a contract with CBS United Kingdom, Ltd.. Under the contract, "[a]ll master recordings . . . and all matrices and phonograph records manufactured therefrom, together with the performances embodied thereon, shall be entirely" owned by CBS Records. The contract used both "services" and "royalty" terminology ("For your services rendered . . . we will pay you the following royalties: . . . "). Applications for the copyrights of all the recordings were filed by CBS, Inc.

The competent authorities of the two nations were unable to reach agreement on the correct treatment for income tax purposes. Germany's position was that these payments constituted "royalties," within the meaning of Article VIII of the treaty, and therefore were taxable exclusively by Germany. The Internal Revenue Service, on the other hand, took the position that the income was from the performance of personal services in the U.S. by Boulez, and therefore was taxable by the U.S. under the provisions of Article X of the treaty.

The Tax Court concluded that the weight of the evidence was that the parties intended a contract for personal services, rather than one involving the sale or licensing of any property rights, stating that "[b]efore a person can derive income from royalties, it is fundamental that he must have an ownership interest in the property whose licensing or sale gives rise to the income." This case is an example of where a taxpayer was subject to double taxation, even though one of the primary purposes of the treaty was the avoidance of double taxation.

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