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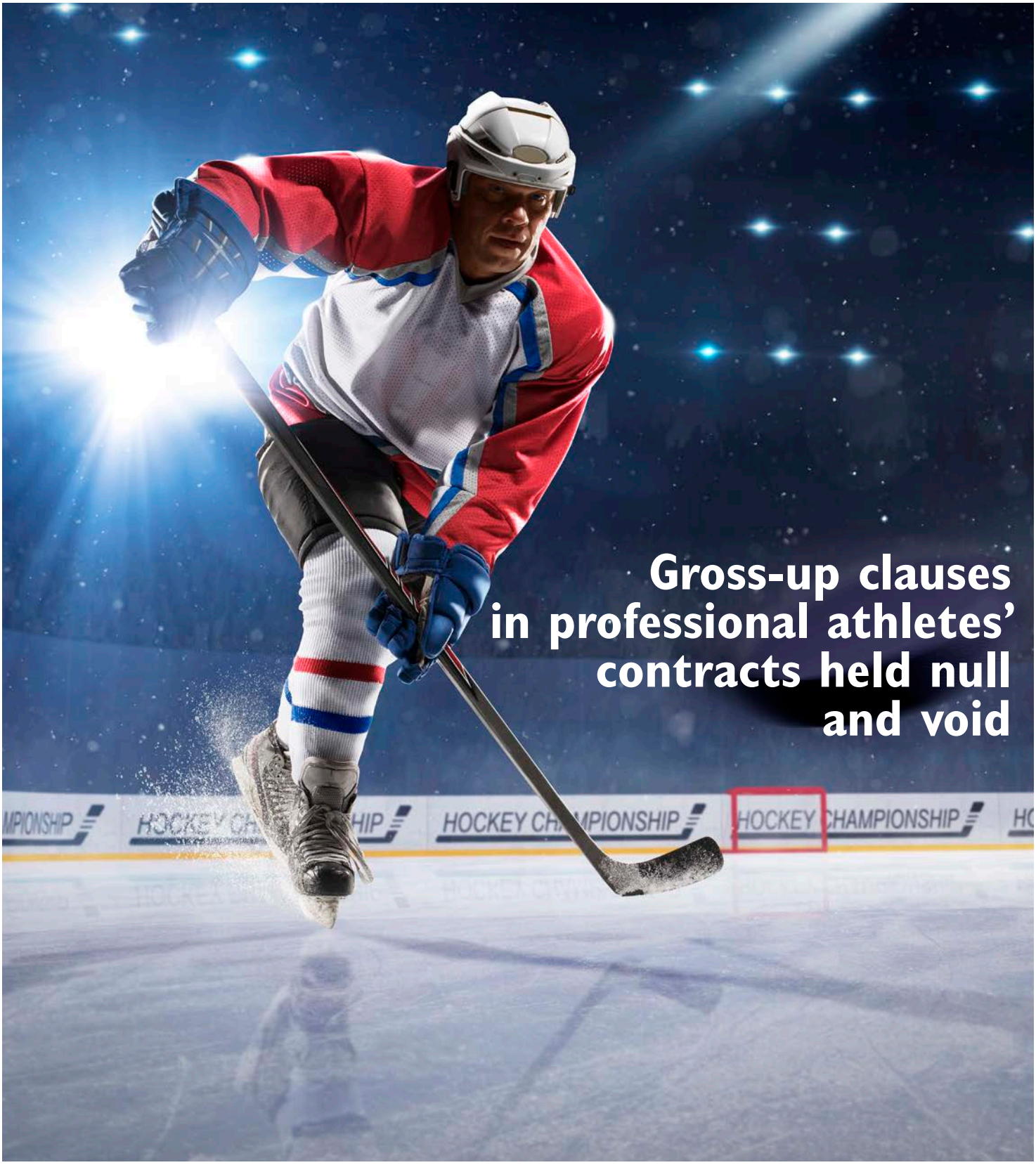

Gross-up clauses in professional athletes' contracts held null and void

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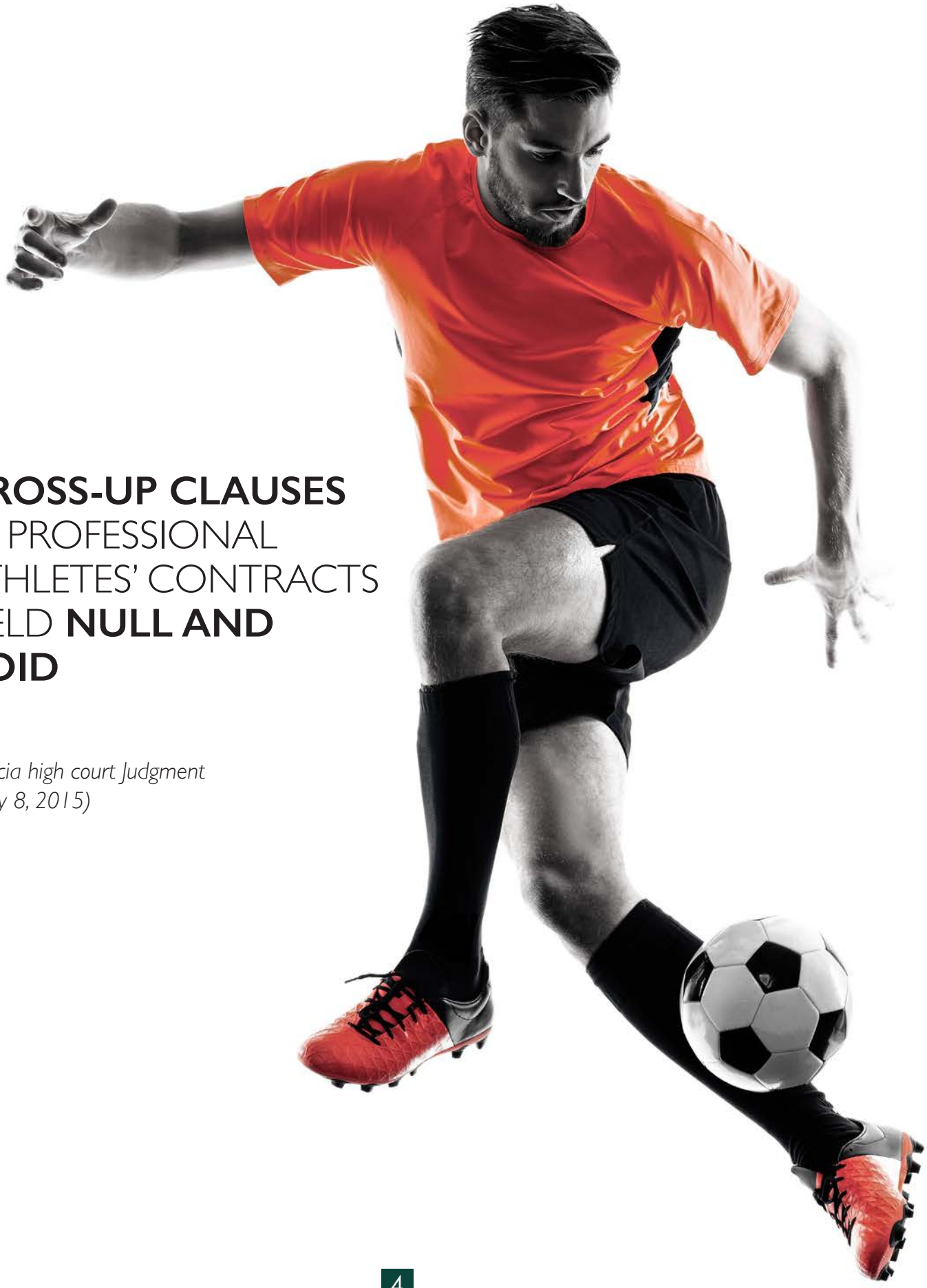

GROSS-UP CLAUSES IN PROFESSIONAL ATHLETES' CONTRACTS HELD **NULL AND VOID**

(Galicia high court Judgment of July 8, 2015)

Summary: Galicia High Court's interpretation on the validity of a clause in the employment contract of a professional handball player, providing net amounts for certain emoluments

ÁNGEL OLMEDO JIMÉNEZ

Issue under debate

In this judgment, the issue at the heart of the decision was the validity that must be conferred on the clauses of the player's contract which provided for net payments.

Facts of interest

The claimant, a professional handball player for Sociedad Deportiva Octavio Vigo, filed a petition with the court to confirm the validity of his contract, which provided, for the 2011-2012 and 2012-2013 seasons, that he would receive €15,000 and €31,000 in respect of image rights, traveling and accommodation expenses, in each of them. For both seasons, it specified that these were net amounts.

Although there is no evidence that the player worked in the 2012-2013 season, the club paid a sum total of €35,019.92, and the worker filed a petition to be paid the missing net amount.

The lower court partially upheld the claim and ordered the club to pay €7,526.38 (in respect of the amount owed after withholding the required amounts of tax).

Judicial interpretation

The debate, in this case, centered on determining whether the clause contained in the contract was valid or whether, to the contrary, as concluded by the lower court, it had to be held null and void, because it contained a null and void covenant under article 26 of the Spanish Workers' Statute, which disallows the tax burden to be shifted from the worker to the employer.

The player argued that the clause in the contract, which provided that "*the covenanted amounts are free of any tax or contribution cost which might be distinguished from the application of this contract*", had to be construed as a mere guarantee of a net salary, without precluding the fact that the club later had to pay over the required withholdings to the tax authorities.

After establishing the scope of the debate, in these terms, the Galician regional court held that the clause had to be construed as concluded by the lower court, namely, as if it were the gross amount on which the employer had to make the required withholdings.

And this was because in its view "*the interpretation of the contract examined in this case requires it to be concluded that a tax burden relating to the employee has been attributed to the employer, since the expression used is that the "the covenanted amounts are free of any tax or contribution cost which might be distinguished from the application of this contract*"".

The high court's reasoning in this respect was that the contract had not used the term "withholding", and therefore, it had not made it clear that the receipt of the net amount was due to the employer assuming the tax burdens relating to the player.

It is on this last point that the decision departs from the judicial precedent, such as the decision rendered in the Milito case (Aragón high court judgment of December 15, 2010), in which it was evidenced, from the literal wording of the clause, that the club did not assume the player's tax obligations, but rather a salary calculation mechanism was laid down guaranteeing a net sum to the player, without precluding the player's obligation to observe his tax duties.

Galicia High Court's decision does, however, confirm the judicial precedent which, in relation to a monetary claim, had already set aside the validity of determining net amounts in compensation clauses, in the cases of football players Zoran Vulic (Balearic Islands High Court) and Hugo Sánchez (Madrid High Court), for example.

The last point addressed in the judgment is the payment in respect of an undertaking in the image rights licensing agreement, on which it held that the requirements for observance of the agreement were met, and ordered the club to pay €18,000.

THE NEW **EXIT TAX** DOES NOT APPLY TO INDIVIDUALS QUALIFYING AS NONRESIDENTS IN SPAIN IN 2015

DIEGO RODRÍGUEZ TITOS

The tax reform approved in 2014 introduced in the Spanish Personal Income Tax Law (LIRPF) , for the first time, effective on January 1, 2015, liability for what is known as the "exit tax". The Spanish LIRF refers to it as the tax on capital gains due to a change of residence ("*Ganancias patrimoniales por cambio de residencia*") and sets out the rules on this tax in article 95.bis. For many years a similar rule existed in the Corporate Income Tax Law. To date, the LIRPF only provided for the tax implications of changes of residence in very specific scenarios, or residual, scenarios, if you like, (relocations to tax havens, recognition of deferred gains due to the performance of restructuring transactions under the tax neutrality regime, recognition of deferred gains or income under the cash basis method, etc.). These rules had until now had very little impact in the sport and entertainment world in Spain.

The change introduced in the LIRPF is much more ambitious, being general in its scope, and having a clearly anti-evasion slant. This is new legislation that could have a noticeable impact in sport and entertainment arenas in Spain. It also exists in other Western countries (France, the Netherlands, Denmark, the US, among others).

The new provisions now apply to personal income taxpayers who have been tax-resident in Spain in 10 out of the past 15 taxable periods and move their tax residence outside Spain.

In these cases, it will be considered that the taxpayer obtains a capital gain in Spain, **regardless of whether or not the gain has actually been realized,** amounting to the difference between the cost value and the market value of the shares of any type it owns, if:

a. the aggregate market value of all the shares is higher than €4,000,000, or

b. an ownership interest is held in one entity, amounting to more than 25% and having a market value higher than €1,000,000.

The LIRPF contains a number of specifications as to the quantification and form of taxation of the gain which, in essence, may be summarized as follows:

- The gain must be included in savings income (and taxed, therefore, at the relevant reduced rates) in the last taxable period in which the taxpayer is taxed in respect of Spanish personal income tax.

- The market value must be determined on the accrual date in the last taxable period for which the personal income tax return must be filed, in which a number of rules must be applied according to whether or not the gain relates to securities listed on organized markets.

Similarly, to try and avoid scenarios involving discrimination or a breach of EU law, double taxation, etc., the legislation also lays down a number of specific rules and preventive measures:

- Separate regimes are provided according to whether the move is to a country in the EU or European Economic Area (EEA) with which there is an actual exchange of information or outside those areas.

- If the move is to a country in the EU or in the EEA, any potential tax debt arising in this respect is automatically deferred without the need to provide security. An assessment of tax will be required, where applicable, if within the 10 periods following the period when the move was made, the shares are transferred, there is a change of residence to a country outside the EU or outside the EEA, or certain reporting requirements laid down in the legislation are breached.

- If the move is to a country outside the EU or outside the EEA, however, any potential tax will be payable in the customary manner, although the option is provided to apply for a special deferral for a 5-year term (extendible for a further 5 years), conditional on the

provision of the types of security laid down in the General Taxation Law (bank guarantee, etc.). On this point, the law sets out a number of special provisions on the types of security if the move is for employment or other reasons, according to whether the destination is a tax haven or whether or not it has signed a tax treaty with Spain.

The legislation concerned, which as may be confirmed, is definitely complex, prompted a considerable amount of discussion in the legislative process over the adverse effects it could have in theory on a certain type of taxpayer. It was criticized by legal and business commentators because it could deter investors or entrepreneurs from settling in Spain or because the law appears to presume that everyone moving residence does so for tax reasons (there are indeed some preventive measures to avoid this but in some cases they may appear to be too demanding, especially if the move is to a country outside the EU or EEA).

Since it started to apply, one of the issues causing the most doubts is the position of those taxpayers who were resident in Spain in 2014 (under the former legislation), decided to move their tax residence outside Spain in 2015, and became nonresidents in that year. The law laid down no specific transitional rules for this scenario which has been the source of considerable doubts. In theory, under the assessment mechanism provided in article 95.bis LIRPF in force in 2015, the taxpayer concerned should have included the theoretical capital gain in the return for 2014 (the last return they were going to file as a tax resident). The problem is that, in 2015, that individual was no longer tax-resident in Spain and as such not taxable in respect of Spanish personal income tax, so at first sight there seemed to be no sense in taxing them on a (presumed) gain under a law that no longer applied to them.

The Directorate-General of Taxation (DGT) had the chance to express its opinion on that scenario following two recent ruling requests , with very similar contents, filed by taxpayers who had moved tax residence to Germany and to Andorra in 2015 (see ruling CV2270-15, of July 20, 2015 and ruling CV3900-15, of December 4, 2015). The DGT concluded in this respect, rightly so in our opinion, that, considering that article 95.bis, governing the exit tax, entered into force on January 1, 2015, for it to apply the taxpayer must have been tax-resident in Spain in 2015, at least. In other words, that law does not apply to taxpayers who were tax-resident in Spain in 2014 and become nonresident in 2015. The DGT concluded, using these same wording in both rulings, that "*if the last taxable period for which the individual who moves their tax residence must file*

[1] On the same subject, ruling requests V3192-15, of October 21, 2015, V3065-15, of October 13, 2015, V2688-15, of September 17, 2015 and V2506-15, of August 5, 2015.

a personal income tax return is 2014, article 95.bis LIRPF will not apply to them".

In short, the doubt has been settled satisfactorily for all those who changed residence in 2015 and became nonresidents in that year.

It must be remembered, however, that any individuals who changed tax residence in 2015 but continued to be tax-resident in Spain in that year (because, for example, the move took place to a country without a tax treaty in the last quarter of the year) ***may* be subject** to the exit tax provisions. Obviously, every change of tax residence performed in or after 2016 will potentially be affected by these provisions.

> *"Exit Tax", enters into force on 1 January 2015.*

BIG DATA IN SPORT

Summary: Big data is hurtling into sport, particularly into the football market. How will teams, fans or players benefit?

CAROLINA PINA

Introducción

Technology has brought sweeping changes to many social and economic sectors: communications, transport, finance, are some examples. And it is now hurtling into the professional sports market, especially the technology related to big data.

What is big data?

In a sports context it means the chance to capture huge amounts of data from wearables on players' clothes, sensors on the ball or around the stadium itself, along with historical data from results or trending topics online or in social media. These data are processed and analyzed using sophisticated algorithms and computer programs to obtain statistics, predictions or valuable information for the coaches, the teams, the fans, the betting houses or the players themselves. The potential for using the data is huge; in videogames, for example, or in fantasy sports.

Big data both increases the business opportunities for sports organizations and clubs, in relation to the sale of the data or their analysis, and assists clubs and players with bettering performance, by enabling them to design specific training plans, strategies and tactics tailored to the results obtained.

It also has uses in business intelligence, to improve teams' relationships with their fans, by being a powerful marketing tool.

Although this may seem to belong to the future, it is happening now, which may be seen from the huge amounts of money being spent by the sportswear

companies owning numerous patents on these wearables.

Big data represents a huge business opportunity for professional sport, and especially for football, which continues to be the largest sports business in Spain by far. Some countries, the US, for example, have for years been implementing data analysis from their large sporting events: American football, baseball and basketball.

Legal protection

From a legal standpoint, what legal protection is there for firms choosing to engage in data analysis in Spain? Fundamentally, the law protects the databases storing the captured information, and the software used to process it.

The starting point is therefore that data are not protectable per se, with the exception of personal data. What is protectable, however, is the gathering together of all these sports data in an orderly fashion, by forming a database. This protection, provided in the intellectual property law, prohibits the extraction or re-utilization of any database without the owner's authorization, through what known as sui generis right protection.

There is also protection for the data analysis software, as a work under the law on copyright. Often, however, it is the algorithm underlying the software that brings value to the analysis of the data. The protection of an algorithm is a tricky matter legally. The best route to secure the most suitable form of protection is usually as an industrial secret.

CONCLUSION

In view of its prominence on the world stage and economic importance, Spanish football has an unbeatable opportunity to be a pioneer also in the data analysis business, because this is a new sector promising high returns in the football industry, economically and in benefits to the sport.

THE ANNUAL **TAX** AND CUSTOMS **CONTROL PLAN FOR 2016**

BELTRÁN SÁNCHEZ

The annual Tax and Customs Control Plan for 2016 was published in the Decision of February 22, 2016 of the Directorate-General of the Spanish Tax Agency (BOE of February 23, 2016).

Designed with the fundamental aim of preventing and combatting tax fraud, the Plan is structured around three broad areas, (i) the audit and investigation of tax and customs fraud, (ii) the control of fraud in the collection phase and (iii) the collaboration with the tax authorities of the autonomous communities.

For each of these areas, as has become customary practice, several types of control measures and steps are defined according to the sought aims.

Generally, these measures are a continuation of those carried out in fiscal year 2015. The most important are described below:

a) In the preamble it is underlined that advantage is going to be taken of the new wording of the General Taxation Law in relation to (i) the statute of limitations for the right to audit and (ii) the lengthening of the terms for the inspection proceeding, with the aim to make the authorities' activities more efficient and reduce disputes. Emphasis is also placed in the preamble on the new regulations enabling tax assessments to be made even if a criminal proceeding for an offense against the public treasury has been initiated (which, it is said, is supplemented with the non halting of administrative proceedings aimed at collection of the assessed tax and customs debt).

b) Special importance is given to improving the cooperative relationship between the tax agency and the companies that have signed up to the Code of Tax Good Practices, which will enable a better and earlier understanding and mutual evaluation of the tax policy and management of entities' tax risks.

c) In the area of fighting the underground economy, the Spanish Tax Agency will step up its attention to detection of the use of hiding software or dual-use software through on-site searches and selective proceedings coordinated nationally.

Special attention will be paid in economic sectors with intensive handling of money in cash.

In this same area, they will step up their work in relation to the activities of importing goods, especially in sectors where prima facie evidence is observed of fraudulent activities in the importation process and in the subsequent distribution process, or of the hiding of all or part of the commercial transfer chain.

d) The investigation of assets abroad will be enhanced by performing the tasks necessary to enable implementation and fulfillment of the various international obligations acquired. In particular, specific mention is made of:

- The Agreement with the United States and implementation of the Foreign Account Tax Compliance Act which will enable the effective performance in 2016 of the automatic exchange of financial account information with the United States ("FATCA").
- The Common Reporting Standard ("CRS") approved by the OECD which will enable the exchange of foreign account information from 2017.
- Council Directive 2011/16/EU on administrative cooperation which broadens, within the European Union, the automatic exchange of financial accounts between the member states to coordinate it with the CRS from 2017 generally.

e) The fight against aggressive international tax planning (propelled by G20 and the OECD in the base erosion and profit shifting (BEPS) project) is strengthened along the same lines of action as in earlier years. In this area, special importance will be given to the information produced by enterprises in the context of the Code of Tax Good Practices concerning their degree of presence in tax havens or the level of consistency of their tax decisions with the principles in the OECD BEPS package.

f) In the area of the digital economy, action protocols will be carried out on companies engaged in e-commerce and on those storing their data on the cloud. Steps will also be taken to audit the taxation of businesses operating online. As part of these steps, a risk analysis of operators of this type will be performed and an effort will be made to step up the use of technologies enabling information to be obtained via indicators present in the social networks together with the use of statistical tools for detecting fraud patterns.

g) In the area of customs, a one stop shop will be brought into operation, the new legal framework will apply, which includes a host of simplifications and lays down new requirements for the various customs-related authorizations. Furthermore, there will be increased monitoring of the satisfaction of requirements to benefit from the status of Authorized Economic Operator and to apply the simplified procedures.

h) Efforts will be made to further investigation work on the money laundering offenses associated with the defined criminal practices related to tax and customs, together with advanced work on the analysis and selection of candidates in this connection.

i) Lastly, and with special importance for the sports industry, in the area of tax collection, management of the outstanding debt will be performed on a greater number of taxpayers, and emphasis will be placed on the shifting of liability in all the scenarios set out in the General Taxation Law by making use of all the investigation tools within their reach to prevent defaults on debts which the third parties incurring the legal scenario concerned must be liable. Additionally, investigation activities will be stepped up against more complex instances of fraud, to detect a greater number of cases of assets fraudulently hollowed out, and increase the number of criminal action cases to be brought, with the aim to stamp out the feeling of impunity that certain debtors may have. Collection management will also be made swifter where there is prima facie evidence of a crime against the public treasury or contraband. Lastly, exceptional control will be exerted over deferred or split payments of debts, with the aim to combat this option being used for purposes other than those set out in the law and an exhaustive follow-up will be carried out on the fulfillment of concession agreements.

NEWS

GARRIGUES SPORTS & ENTERTAINMENT WORKS WITH THE OFFICIAL STATE GAZETTE GOVERNMENT AGENCY ON DRAWING UP THE SPORTS LAW CODE

An event was held on November 25 at the Garrigues head office to present the Sports Law Code, prepared jointly by Garrigues Sports & Entertainment and the Official State Gazette Government Agency (AEBOE) Félix Plaza, partner in the tax department and co-director of Garrigues Sports & Entertainment; Manuel Tuero, general manager of the Official State Gazette Government Agency, and Ramón Barba, subdirector-general for sports at the Spanish Sports Council presented the Sports Law Code at that event. Since last year, Garrigues has been working with the AEBOE on the creation of a collection of electronic codes summarizing the rules in force on various subjects in Spanish law. On this occasion, our experts have participated in the drawing up of a Sports Law Code which was unveiled in January, a work poised to become an indispensable aid to the professionals practicing in the sector, because it will provide them with permanently updated information on the main rules governing the sports sector.

GARRIGUES SPORTS & ENTERTAINMENT PARTICIPATES IN THE *OPORTUNIDADES DE INVERSIÓN EN CINE* CONFERENCE ON CINEMA INVESTMENT OPPORTUNITIES, ORGANIZED BY THE SPANISH AUDIOVISUAL PRODUCERS ASSOCIATION (PROA, PRODUCTORES AUDIOVISUALES FEDERADOS)

On December 15 Garrigues Sports & Entertainment took part in the *Oportunidades de Inversión en Cine* conference on cinema investment opportunities, organized by PROA, the Spanish Audiovisual Producers Association, making known the tax incentives for Catalan productions.
Manel Bueno Gavín, partner in the Garrigues corporate law and commercial contracts department at the Barcelona office participated at the conference by providing the corporate and commercial law standpoint on the roundtable organized at the conference, aimed at encouraging private investment in Catalan audiovisual projects by publicizing the opportunity for investment in audiovisual works provided by tax incentives.

GARRIGUES SPORTS & ENTERTAINMENT TAKES PART IN THE SPORTS LAW GATHERINGS ORGANIZED BY A PROFESSIONAL FOOTBALL FOUNDATION (FUNDACIÓN DEL FÚTBOL PROFESIONAL)

On January 26 Garrigues Sports & Entertainment took part in the meeting held in January as part of the sports law gatherings organized by Fundación del Fútbol Profesional, and usually attended by a healthy number of representatives of sports institutions, football clubs/SADs and sports law experts.
Carolina Pina, partner in the Garrigues intellectual property department and co-director of Garrigues Sports & Entertainment, gave a talk on the subject of Big Data and Football.

GARRIGUES SPORTS & ENTERTAINMENT TAKES PART IN UNIVERSITY COURSE ON SPORTS MANAGEMENT AT UNIVERSIDAD REY JUAN CARLOS

On January 31, Garrigues Sports & Entertainment took part in a course in sports management at Universidad Rey Juan Carlos, given in conjunction with FIFA (Fédération Internationale de Football Association) and CIES (International Centre for Sport Studies).
Celia Sueiras, counsel in the Garrigues intellectual property department, gave the introductory session on trademarks and ambush marketing.

GARRIGUES SPORTS & ENTERTAINMENT PROVIDES LEGAL ADVICE FOR THE PRODUCTION OF CAPTURE THE FLAG (ATRAPA LA BANDERA)

Garrigues Sports & Entertainment took part in the advisory services to the successful Spanish animated film Capture the Flag (Atrapa la Bandera), which premiered last August and recently took a Goya award for the best animated film.

JUDGMENTS AND RULINGS

1. Supreme court judgment, of October 19, 2015, on the whether an intermediate civil engineer (ingeniero técnico de obras públicas) is qualified to sign off the building plans for multi-sports tracks

In this decision, the Supreme Court heard the cassation appeal lodged against the national appellate court judgment dismissing the application for judicial review filed in turn against the decision of the head of sports management in the youth and sports department of Junta de Extremadura, the Extremadura regional government, in which it rejects the building plans for an indoor multi-sports track because it considered that the person signing it, the equivalent of an intermediate civil engineer, was not qualified to draw up those plans. The lower court considered that the only person with the authority to do so was a qualified architect.

The Supreme Court started out with an examination of the potential violation of article 2.1 of Building Law 38/1999, of November 5, 1999. That article sets out three categories of building subject to the rules in that law for their construction, whereby the authority to draw up the plans varies according to the characterization of the work concerned, (art. 10). Based on these provisions, the Supreme Court considered that a multi-sports facility must fall within point 1.a) of that article 2 (cultural buildings), and therefore the enabling instrument for planning the multi-sports facility would, as determined in the lower court's judgment, be an architect's qualification. Additionally, the Chamber set aside the ground for cassation consisting in the violation of the Supreme Court's own case law (specifically, supreme court judgment of January 19, 2012; rec. 321/2010), recognizing the technical capacity of highway engineers (ingenieros de caminos) to draw up the plans for a multi-sports facility. The Chamber ruled that the fact of recognizing the authority of highway engineers does not mean this can automatically apply to intermediate civil engineers, because their qualifications are not the same. Lastly, it recalled the existence of other case law in which it set aside the technical capacity of engineers (industrial engineers, in this case) to draw up the plans for educational facilities.

2 Supreme court judgment, of November 4, 2015 on a concession for a radio station

In this decision, the Judicial Review Chamber at the Supreme Court set aside the cassation appeal lodged against the judgment rendered by Navarra High Court which similarly set aside the application challenging the Navarra government's decision setting aside the appeal against Provincial Order 301/2009, refusing to give authorization to assign the concession for a radio station to another entity.

The Supreme Court pointed out that the decision rendered by the Navarra government on the appeal contains a long reasoned explanation of the grounds and principles which it applies to confirm the order refusing authorization, and mentioned in particular the conditions agreed and undertakings given by the concession holder regarding the contents of its programs, underlining that the proposed change does not involve just one alteration to the initial bid, but rather a substantial change, in that from its own schedule of local and regional programs, in which 10% of its air time is devoted to sports, it will change to programs with markedly sports contents. It was precisely its own programs and local contents that were the determining factors for the award of the concession, and therefore the proposed change has an impact on one of the essential elements taken into consideration in the concession for the station, which determined, in turn, the decision to reject the intended assignment.

3 Supreme court judgment, of November 11, 2015, on the right to personal privacy and personal portrayal violated by images broadcasted on television

In this judgment, the Supreme Court ruled on the indemnification to be determined in a case of violation of the right to personal privacy or personal portrayal with the photographs shown on certain television programs.

At the first and second instances the courts found in favor of the individual claiming rights in those images, because they considered that the way in which those programs had acted was an unlawful intrusion on the right to privacy and personal portrayal, causing emotional damage, and they granted monetary compensation. In a cassation appeal proceeding the judgment was overturned, and an appeal for constitutional rights was lodged with the Constitutional Court, which was upheld, and reversion of the proceedings was ordered to determine the amount of the compensation.

The Supreme Court ruled that a ground for cassation cannot be upheld if it does not objectively justify the

infringement but is based on a partial and subjective view of the prevailing circumstances, since those circumstances have not prevented the Constitutional Court from finding the damage concerning privacy and personal portrayal, in that an individual's fame among the general public does not justify the obtaining of clandestine pictures of their person to be broadcast later on television programs solely for entertainment purposes. Also, the information disclosed in those pictures falls outside matters of public significance on the terms established in the constitutional court's case law, and the consent given by the claimant on other occasions to specific reproductions of their physical appearance is not an obstacle to upholding that damage, neither is the fact that the pictures were taken in public places.

4 Madrid Court of First Instance no. 16, of November 24, 2015, on unlawful intrusion on the right to honor

Madrid Court of First Instance no. 16 fully upheld the claim brought for unlawful intrusion on the right to honor.

Firstly, the dispute concerned the defendants' affirmations made in a range of press articles concerning the hiring of athletes on the basis of business principles that only benefit the claimant company to the detriment of the strictly sporting interests of the club.

After summarizing the case law of the Constitutional Court and the Supreme Court concerning scenarios where the fundamental right to freedom of expression collides with the right to honor, the Court concluded that in the case under examination an unlawful intrusion on the claimants' right to honor had taken place.

Consistently with this reasoning, the judge upheld the claim, ordering the defendants, on top of payment of the required amount of monetary compensation, to publish a retraction article in the media in which the disputed article had appeared.

5 Supreme court judgment, of December 7, 2015, on the penalty imposed by the Spanish Antitrust Commission (CNC) on Mediapro, by reason of the acquisition of the audiovisual rights for the Liga and Copa del Rey matches in a number of seasons

The Supreme Court heard the cassation appeal lodged by Mediapro against the national appellate court judgment of April 10, 2013, upholding its appeal against the CNC's decision penalizing the appellant for concluding agreements to acquire the audiovisual rights for the Liga and Copa del Rey matches for terms longer than three years, because it considered that they were contrary to the prohibition imposed by article 1 of the Antitrust Law (CDC) and article 101 TFEU.

The appellant pleaded that in this case the CNC should have applied retroactively the penalty regime set out in article 21.1 and additional provision 12 of the General Audiovisual Communication Law (LGCA), according to which, the agreements for the acquisition of audiovisual rights for football competitions should have been for a maximum term of 4 years. The Supreme Court argued, however, that, bearing in mind that the LGCA came into force on May 1, 2010, and the CNC rendered its decision on April 14 of the same year, none of the concluded agreements can be protected by a law that was not in force when the CNC held that they were contrary to the LDC.

The Court also failed to uphold the appellant's pleading of arbitrary and unreasonable assessment of the evidence, because the questioned evidence referred to the change made in the market for the acquisition of the audiovisual rights of football clubs due to the appellants succession to the position previously occupied by Sogecable, when the determining factor for CNC's decision and the decision in the appealed judgment on the restriction of competition was not the succession to Sogecable's position by Mediapro and the circumstances that prompted it, but rather the position held in the market by the latter, which for the 2009/2010 seasons had acquired the audiovisual rights for the Liga and Copa del Rey matches (not including the final) for at least 38 of the 42 teams playing in the first or second division, and the agreements for 30 of those 38 teams were for terms running up to, at least, the 2013/2014 season, considered jointly with the fact that the visiting club's right to retransmission of the match powered or strengthened the effect of closure of the market for the acquisition of the audiovisual rights of the football clubs.

6 Judgment of the General Court of the European Union, of December 10, 2015 (case T-615-14), on the application by F.C. Barcelona for a figurative Community trade mark representing the outline of its crest.

In this case, the General Court dismissed the appeal lodged by F.C. Barcelona against the First Board of Appeal of May 23, 2014, which, in turn, dismissed the decision of the Office for Harmonisation in the Internal Market (OHIM), on the application filed by the club relating to the registration of the outline of its crest as a Community trademark.

The Court ruled that the appellant had not managed to prove with the proposed means of evidence that the public sees the sign formed by the outline of its crest as an indication of the commercial origin of the products

and services mentioned. In the same vein, the Court also considered that it had not even been proven that the outline of the crest, taken alone, is a significant element of it, whereas the crest contains, on the contrary, other predominant elements, such as the upper case letters ("F", "C" and "B"), the maroon and blue color combination or the Catalan flag and the flag of the city of Barcelona.

7 Supreme court judgment, of December 22, 2015, on management of the copyright owned by the directors of photography in cinematographic and audiovisual works

In this case, the Supreme Court ruled on the cassation appeal lodged by AISGE, the Spanish collecting society for artists and performers, against the judgment of January 7, 2014, rendered by Madrid High Court, on the appeal lodged against the rejection of the application filed by the entity with the Ministry of Culture, requesting for its authorization as a collecting society to be broadened to take in management of the copyright owned by the directors of photography in cinematographic and audiovisual works, and also for approval of the amendment to its bylaws to accommodate this.

The Court dismissed the appeal because it considered that article 87 of the Revised Intellectual Property Law sets out a finite list of the persons qualifying as the "authors of audiovisual works", and that list does not mention the directors of photography.

The Court ruled along the same lines as the lower court, which without entering into assessing the existence or otherwise of copyright in the contribution to the audiovisual work by the director of photography, considered that this was not the task of the Ministry of Culture.

The specific purpose of collecting societies is to manage the rights contemplated and regulated in the Spanish Intellectual Property Law, and no other class of rights, as the lower court pointed out in its judgment. If the Ministry of Culture refuses to approve the required amendment to its bylaws, it cannot be considered contrary to the law, because the management of rights not contemplated in the Intellectual Property Law cannot be made subject to the separate legal regime.

8 Supreme court judgment, of February 3, 2016, on the conceptual interpretation as "economic activity" for personal income tax purposes of activities with persistent losses and of any that may entail a "hobby" for the party with tax obligations

The Supreme Court rendered a judgment for a ruling on a point of law in connection with the cassation appeal lodged against the Madrid high court judgment of July 1, 2014, which dismissed the administrative appeal prepared and lodged against the decision by Madrid Regional Economic-Administrative Tribunal, of December 19, 2011.

In its decision, the Supreme Court concluded that the existence of recurring losses in the conduct of an economic activity does not imply per se that its status as an economic activity with respect to article 25 of the Personal Income Tax Law may be questioned, because that law does not make that characterization conditional on whether income or losses are obtained in the year, nor can it be presumed that there has been clearly irrational conduct by the party with tax obligations which precludes that characterization.

The Court then concluded that the fact that a taxpayer carries on an economic activity as a "hobby" or pastime does not preclude its characterization as an economic activity for the purposes of the Personal Income Tax Law, if the requirements laid down in that law are satisfied.

9 Supreme court judgment, of February 3, 2016, on the authorization for occupancy of public property regarding the land occupied by Ciudad del Fútbol de las Rozas

In the case, the Supreme Court held that there was no case for the cassation appeal lodged by the public prosecutor's office against the Madrid high court judgment acquitting the mayor and other members of the local council of las Rozas of criminal misfeasance in public office, in relation to the failure to enforce Madrid high court judgment number 1471/2004 (rec. 5371/1998), which placed that local council under obligation to grant, in accordance with the law, the concession for occupancy of public property regarding the land in Ciudad del Fútbol de las Rozas by the Spanish football association (RFEF).

Consistently with the principle upheld in the appealed judgment, and contrarily to the claims by the public prosecutor's office, the Supreme Court considered there was no factual error in the interpretation of the evidence by the lower court, and held that the remedy chosen by the appellant requires in this case a document to be specified which evidences the error in the assessment of evidence. In this case, the documents proposed by the public prosecutor's office (three appraisal reports on the use of the land) do not evidence any error, because the lower court has included them in the factual account of the points it considers relevant for holding that the facts have been proven.

The Supreme Court next held that the new ability to be subsumed in the offense of disobedience and criminal misfeasance in public office as a result of the alterations

occurred in the proven facts disappears with the dismissal of the above ground.
Lastly, the Supreme Court concluded there had not been a lack of reasoning by the lower court, pointing out that it had used a number of reports, by its own technical and supervision bodies. Even so, the Supreme Court found that there might be errors in some of the decisions submitted, which had been corrected in the judicial review jurisdiction.

10 Judgment of the Court of Justice of the European Union of February 4, 2016, concerning unauthorized intermediation in sporting bets by the national of one member state in another member state

In the case settled by this judgment, the CJEU rendered a decision on the request for a preliminary ruling filed by a German court, by reason of the complaints raised by the public prosecutor's office of that country against a Turkish national, for engaging in intermediation activities in sporting bets without holding the required license from the competent authority in Baviera. The revenues obtained from this activity were collected by a company domiciled in Austria.
The complaints made against this person were based on the application of the Bavarian law implementing the Treaty on gaming, which provided that upon expiry of the Treaty its provisions could continue to be applied in Baviera. The legislation transposing the Treaty provided for a public monopoly on betting on sporting competitions, and its consistency with EU law was the subject of this request for a preliminary ruling.
The Court ruled that article 56 TFEU, on the freedom to provide services within the European Union, must be interpreted to preclude the penalty imposed on the national of another member state, where the license required to carry on the intermediation activity in Germany was conditional on a procedure that did not observe the principles of equal treatment and non-discrimination on grounds of nationality.

11 Supreme court judgment, of September 15, 2015, on the right to honor, privacy and personal portrayal

The Civil Chamber dismissed the cassation and special appeals concerning procedural infringement, brought by a number of contributors to a television program against the judgment rendered by Madrid Provincial Appellate Court on an appeal.
In this judgment, the Court confirmed the appellants' obligation to indemnify the respondent as a result of an unlawful intrusion by the former on the latter's right to honor and personal portrayal. Similarly, the Court recalled that, although the right to freedom of expression protects even the "harshest" criticism, especially in the case of well-known or public individuals, the limits on that fundamental right are to be found in the expression of criminal insults or unnecessary opinions or judgments as an element of criticism. The mere serious insults made by the appellants of the appellant, with a clear intent to offend and make criminal insults, constitute, therefore, an infringement of the right to honor, privacy and personal portrayal.

12 Binding DGT ruling, V2930-15, of October 7, 2015, on the VAT treatment of the organization of a basketball tournament

The requesting entity was intending to organize a basketball tournament for a number of sports clubs, by handling the accommodation and meals of the participants, the hiring of the referees, and the acquisition of the sportswear and trophies. In relation to this arrangement, it asked whether it could apply the 10% reduced rate to the meal and accommodation services.
Firstly, the DGT mentioned that the special regime for travel agencies applies to the services provided by the requesting entity, since the services provided consist of a principal transport and accommodation service, and the other services are ancillary (referee and trophy services). Therefore, if the requesting entity elects to apply the regime for travel agencies, all the supplies of goods and services it makes by reason of those activities will be taxed at 21%.
The requesting entity could choose not to apply that regime, however, on the terms of article 147 of the VAT Law, if the basketball clubs receiving the services were traders or professionals acting as such with the right to a credit or refund of the input VAT paid by reason of their participation in the tournament. Accordingly, the accommodation and meal services would be taxed at the 10% reduced rate.

13 Binding DGT ruling, V2925-15, of October 7, 2015, on rectification of the taxable amount for VAT purposes by a company representing a professional footballer

The DGT issued a ruling in reply to a request submitted by a company representing a professional footballer in relation to the correction of the taxable amount for VAT purposes, charged in respect of the services provided to the athlete. Specifically, the requesting entity received a commission fee based on the amount of the sports and advertising contracts in which it acted as intermediary.

Since 2010, however, the player had denied the existence of the contract with the company, as a result of which the requesting entity stopped issuing invoices for its services, because it was unaware of the relevant amounts, and it sued the athlete.
In this case, the DGT pointed out that if its claims are upheld in a final judgment the athlete's representative should change the taxable amount by issuing the relevant correcting invoice.
Additionally, the DGT recalled that if the requesting entity did not issue an invoice when the transactions for which the taxable amount is modified became due for payment, it will have forfeited the right to charge the tax relating to those transactions for which more than one year has passed since the date on which it became chargeable. The tax authority recalled, however, the findings by the Supreme Court on March 18, 2009 (rec. 2231/06) to the effect that, although the statute of limitations for the right to charge the tax ends at the end of a year from when the tax became chargeable on the transaction, the option always exists for the customer (the football player) to agree to be charged and bear the tax outside the time limit.

14 Binding DGT ruling, V3096-15, of October 14, 2015, on the subjection to VAT of certain services provided by a tennis coach

The ruling request came from a professional tennis coach, providing services to private clients, to entities and to tennis players registered for contributions under the self-employed workers regime.
After confirming that the requesting party is a trader pursuant to the VAT Law and that none of the exceptions in article 20 of that law apply to him, the DGT turned to examining the place-of-supply rules for the services provided by the coach, because he provides his services to both individuals and legal entities, and he sometimes has to travel outside Spain with players (to an EU member state or to countries outside the EU). In this scenario, the only services that will be subject to VAT will those provided to traders established in Spanish VAT territory, and where the customer for the services is not a trader and they are physically provided in Spanish VAT territory.
Lastly, the DGT specified that the applicable rate will be the standard rate in force when the tax becomes chargeable (21%).

15 Binding DGT ruling, V3148-15, of October 19, 2015, on the tax treatment that must be given to the activity conducted by a not-for-profit association related to a Spanish football club

In this case, a ruling request was submitted to the DGT on the tax treatment that must be given to the activity carried on by a not-for-profit association, not declared in the public benefit, related to a football club. The association's purpose is to bring together the football club's followers, in exchange for a membership fee, and they can attend the matches at the association's facilities or at the club's stadium. Additionally, the association runs a bar service where members can buy refreshments.
The DGT first pointed out that, insofar as the association has not obtained a public benefit declaration, and as a result, cannot be applied the regime set out in Title II of Law 49/2002, of December 23, 2002, it has partially exempt status, under the special regime provided in the Corporate Income Tax Law for these entities.
Accordingly, insofar as the income obtained by the association results from the performance of its specific purpose and not from an economic activity, within the meaning of article 5 of the Corporate Income Tax Law, that income will be exempt. On that basis, the association will not be taxed on the fees received from its members although it will be taxed on the provision of the bar service and on allowing its members to attend official matches. Moreover, this latter type of income must be included in the taxable income for the relevant taxable period, in accordance with article 111 of the Corporate Income Tax Law, and the applicable tax rate is 25%.

16 Binding DGT ruling, V3150-15, of October 19, 2015, on the tax treatment of the commission paid by an entity to a representation agency for hiring disc jockeys

The ruling request to the DGT in this case concerned the nonresident income tax withholding on the commission paid to a representation agency for hiring disc jockeys.
The first point made by the DGT was that, under article 7 of the OECD model tax treaty, and given that the sums received by the agency are for intermediation, not for the entertainer's performances, insofar as the agency does not have a permanent establishment in Spain, the business income obtained by the agency as a result of the commission received will be exempt.
Lastly, the DGT remarked that if the sums received by the agency were actually to compensate the activities performed by the entertainer, it must be considered that they will receive identical treatment to the income received by the entertainer.

17 Binding DGT ruling, V3348-15, of October 29, 2015, on the place of supply for VAT purposes of the ancillary services related to shows supplied by a Spanish enterprise

The ruling request concerned the place of supply for VAT purposes of the ancillary services related to music

and theater shows and advertising events provided by a Spanish enterprise. Those services specifically consisted in: hiring the sound equipment, assembling and removing equipment, production operations, steps for use of the public radio spectrum, the provision of staff, translation services, orchestra and entertainer services.
Firstly, as a general rule, the DGT stated that the services provided by the requesting entity to other traders or professionals resident outside the Spanish VAT territory would not be supplied in that territory. Therefore, on the provision of those services the requesting entity will not have to charge any VAT. Moreover, in relation to the translation services, provision of staff and other services, the provisions in article 70.Two of the Spanish VAT Law will have to be borne in mind. These determine that they will be considered to be provided in Spain if they are actually used by their customers in Spanish VAT territory, even if, under the general place-of-supply rules for VAT, those services are considered to be provided outside the European Union.

18 Binding DGT ruling, V3433-15, of November 11, 2015, on application of the corporate income tax credit for cinematographic productions, by an association of cinema film commissioners

The requesting entity is an association of cinema film commissioners which made a number of requests in relation to the application of the credit for cinematographic productions, under article 36.2 of the Corporate Income Tax Law.
Firstly, the requesting association detailed a long list of the expenses incurred in a production, for the DGT to clarify which of them may form part of the base for calculating the credit. The only expenses that the DGT refused to allow to be included in that base were overheads (lease of a production office, administrative staff, courier service, legal and accounting advisory services or advisory services related to occupational risk prevention, among others) and advertising services, such as those related to the production of trailers in the Spanish language version.
Secondly, in relation to the time period for the credit concerned, the DGT clarified that the production, in Spain, must be considered to start and end on the dates when the first and last expense related to the production are incurred. Accordingly, the credit will apply from the tax period in which the production is considered to be completed in Spain, and providing the incurred expenses go above the €1 million threshold.
Lastly, the DGT mentioned that if the entity wishing to apply the credit under article 36 of the Corporate Income Tax Law has its domicile (or a permanent establishment) in the Canary Islands, it may benefit from the 35% increased credit rate, if the requirements laid down in that article are satisfied and the expenses are incurred in the Canary Islands, regardless of whether the suppliers of the services do not have their domicile or a permanent establishment in the Canary Islands.

19 Binding DGT ruling, V3870-15, of December 3, 2015, on application of the corporate income tax credit for cinematographic productions by an economic interest grouping

The ruling request came from an economic interest grouping (whose members are Spanish corporate income and personal income taxpayers), which in 2014 assumed the initiative in the production of a Spanish feature film which ended in that same year, 2014.
The DGT specified first that, insofar as the economic interest grouping qualifies as a producer under article 120.2 of the Revised Intellectual Property Law, the tax base and the credit under article 38 of the Revised Corporate Income Tax Law coming from the grouping must be attributed to the members, provided they are resident in Spain and that the proportion determined from the deed of formation of the economic interest grouping is observed in attributing these items.
Secondly, in reply to the question as to whether in calculating the base for the tax credit the amount of the subsidy received from the Cinematography and Visual Arts Institute (ICAA) must be deducted, the DGT determined that, insofar as for the periods that began on or after January 1, 2014 subarticle 38.7 of the Revised Corporate Income Tax Law is not in force, that subarticle is not applicable for the purposes of determining the base for the tax credit. Therefore, the economic interest grouping does not have to deduct from the base for the tax credit any amount in respect of that subsidy.

20 Binding DGT ruling, V3904-15, of December 4, 2015, on the withholding to be made from the income paid in respect of the services of solo artists and groups of musicians to a production company

The requesting entity is engaged in the production of performing arts, for which it hires the services of solo artists and groups of musicians, provided through joint property entities (comunidades de bienes) and partnerships. The ruling request was submitted in relation to the treatment, regarding personal income tax withholdings, that the requesting party must give to the sums paid in respect of the provided services.
On the one hand, the Personal Income Tax Regulations, relying on the legislation on the tax on economic

activities (IAE), defines professional income as income derived from carrying on the activities included in Sections Two and Three of the rates schedule for the tax on economic activities, among which are the performing arts activities to which the ruling request relates. However, point 3 of Rule 3 of the instruction on the tax on economic activities provides that, where the activities falling within those Sections are performed through the persons or entities referred to in article 35.4 LGT (which include joint property entities and partnerships), these persons or entities must be taxed and registered in accordance with Section One of those Rates.

The DGT concluded, however, that the conceptual classification of professional income made in the personal income tax legislation cannot be invalidated by the provisions in point 3 of Rule 3 of the instruction on the tax on economic activities. Therefore, the income paid to solo artists and groups of musicians by the production company must be characterized as income from professional activities, which means that it must be subject to withholdings.

Moreover, the tax authority added, in relation to the invoice issued in respect of the provided services, that it is not necessary, nor is it an impediment to its validity, for it to include the amount withheld. Lastly, the DGT mentioned that the withholding agent, and person responsible for issuing the certificate evidencing the withholding, will be the payer of the income concerned (the production company, in this case).

21 Binding DGT ruling, V3988-15, of December 15, 2015, on the taxation in Spain of the income obtained by a Brazilian entity engaged in intermediation services for the acquisition of the registration rights of football players

The DGT affirmed that the income received in respect of the service provided by a Brazilian entity engaged for mediation or intermediation in the negotiation and signing of an agreement to purchase the registration rights of a football player, and in the negotiation and signing of the professional athlete's contract for that football player, a service provided in Spain without a permanent establishment, may be taxable in Spain in respect of nonresident income tax.

The taxable income for nonresident income tax purposes will consist of the gross income paid and, on that amount, 24% tax must be charged. Additionally, the DGT pointed to the obligation that the Spanish entity for which the intermediation service was provided has to withhold tax on the income paid to the Brazilian company.

22 Binding DGT ruling, V4050-15, of December 16, 2015, on the taxation of gifts made by fans to secure a musical project

In reply to this ruling request, the DGT ruled on the tax treatment that must be received by gifts made to secure a musical project. This type of funding is known as crowdfunding or "mircromecenazgo" in Spanish.

Firstly, the DGT ruled that, insofar as those gifts do not bear a reward for the givers, they will be taxed in respect of inheritance and gift tax, the recipient being the taxable person for the purposes of this tax. The DGT also recalled that the period for filing the self-assessment return for the tax is thirty days from the day following the date of the payment into the bank account by the givers.

Lastly, in relation to the gifts made by the sponsor entities, the DGT added that as long as there is no consideration whatsoever, there will be no obligation to issue an invoice, or charge VAT, although it will be necessary to execute a business engagement agreement explicitly setting out the form of evidencing the revenues paid over.

23 Binding DGT ruling, V4071-15, of December 17, 2015, on the tax treatment of various items related to the organization of sports championships

In reply to this ruling request, the DGT gave its view on the tax treatment of various items related to the organization of sports championships.

The remuneration paid to referees was characterized by the tax authority as salary income, which determines the requirement for withholdings pursuant to article 8.1.1 of the Personal Income Tax Regulations. And on the subject of the payment of traveling expenses, the DGT made a distinction between a scenario in which the association itself provides the referees with the means to travel to the place where they have to practice, in which case there will not be any income for them, and a scenario in which the association refunds to the referee the expenses they incur on traveling or pays them a sum for them to distribute at their discretion, which in this last case is characterized as salary income.

Lastly, DGT considers that both the prizes awarded to participating amateur athletes, and the assistance provided to them to cover their traveling expenses to championships, are characterized as income from professional activities subject to withholdings at the fixed rates in force this type of income when it is paid.

24 Binding DGT ruling, V4119-15, of December 21, 2015, on the tax treatment applicable to a business company engaged in providing sports services to individuals

The requesting entity is a business company engaged in providing sports services to individuals. These services

include: a sports club with gymnasium, class activities (Pilates, yoga, etc.), summer camps for children or tennis schools, paddle, surfing and karate, among others. The requesting entity further mentioned that any surplus left over after the club's own expenses have been covered remain at the club to be used for the same social purposes, and the directors are not paid for their duties. In this context, the ruling request was submitted on the application of the exemption provided for in article 20.13 of the VAT Law for the provision of sports and physical education services by, among others, private entities or establishments of a social nature.

The DGT remarked that the special feature of this case involves determining whether the requesting company, which has the legal form of a business company, may be considered a social organization, for the purposes of applying the exemption mentioned above. On this subject, the CJEU in its judgment of March 21, 2002 (C-174/00), had already specified that when determining whether an organization is non-profit making it has to be examined whether it has the aim of achieving profits for its members, that is, not profits (bénéfices or beneficios) in the sense of surpluses arising at the end of an accounting year, but profit in the sense of financial advantages for the organization's members. This reasoning leads to the conclusion that, in spite of the requesting party's nature as a business company, insofar as it satisfies the requirements to be considered an entity of a social nature (art. 20.Three, VAT Law), the services directly related to sport, provided to individuals will be exempt from VAT.

The DGT concluded by listing which of the services provided by the requesting entity are considered to be directly related to sport and which are not. Accordingly, among those that are considered as such, it mentioned the services provided in exchange for membership fees (joining fee or periodical fees) for access to the facilities, and the services consisting in the use of the sports facilities or the hiring of sports equipment. The exemption does not apply, however, to the service of providing access to the premises by nonmembers in exchange for the payment of an entrance fee, the leasing of facilities, for example, to run restaurant or cafeteria services, for example, and the sale of sports equipment, because it qualifies as a supply of goods.

NEW LEGISLATION

1 Decision of November 5, 2015, of the Directorate-General for Employment registering and publishing the minutes of the decision to amend the collective labor agreement for professional sport

The minutes signed by the Spanish Professional Football League (LNFP - La Liga Nacional de Fútbol Profesional), representing the football clubs, and the Spanish Footballers' Association (AFE - Asociación de Futbolistas Españoles), on behalf of their employees, amended certain articles of the collective labor agreement for professional football, including the addition of an article.
Firstly, they amended article 8 on footballers' hours, by setting out that any departure by a player from the team's collective training sessions, without a supported good cause and duly notified to the worker, will not be lawful.
Secondly, they amended article 36 on access to the stadiums, by allowing unrestricted access by professional footballers in the first and second A division and members of AFE to friendly matches or competition matches of any team in the LNFP, subject to the capacity of the stadium (this requirement was not previously included in the collective labor agreement).
Lastly, a new article 45 has been included, governing the termination of contracts and licenses due to relegation for non-sports related reasons.

2 Order ECD/2836/2015, of December 18, 2015, on the procedure for obtaining the certificate of the Spanish Scenic Arts and Music Institute (INAEM - Instituto Nacional de las Artes Escénicas y de la Música), as provided in Corporate Income Tax Law 27/2014, of November 27, 2014.

The Order sets out the procedure for obtaining the INAEM certificate, as required in article 36.3 of Corporate Income Tax Law 27/2014, of November 27, 2014 to claim the new credit related to the expenses incurred in the production and delivery of live scenic arts and musical shows.
Firstly, the expenses incurred by the taxpayer will have to be evidenced, using INAEM's own database, by any of the associations in the sector or from the taxpayer's own documentation.
If the INAEM rejects the application, its decision may be appealed within a month to the Directorate- General for the INAEM. If no reply to the filed application is obtained within three months, the application may be considered to be approved.
Lastly, Annex I to the Order includes the information to be supplied, on the website of the Secretary of State for Culture, with the application for the certificate.

3 Decision of January 27, 2016, of the Office of the Chair of the Spanish Sports Council (CSD) publishing the amendment to the bylaws of the Spanish Royal Automobile Association (RFEA)

The leadership committee of the Spanish Sports Council has given its final approval to articles 2, 3, 5, 7, 11, 12, 32, 43, 47, 60, 66, Title of Chapter VIII, articles 69, 70, 76, 83, 108, 111, 116, 118, 119, 120, 138, 144, 146, 149 and the elimination of article 154 of the bylaws of the Spanish Royal Automobile Association, authorizing its registration on the sports associations register.

4 The European Commission has approved the Spanish tax credit regime for cinematographic and audiovisual productions

The Directorate-General for Competition of the European Commission has given its approval to the amendment of the Spanish tax credit regime for cinematographic and audiovisual productions, which entered into force in January 2015 with the approval of Corporate Income Tax Law 27/2014, of November 27, 2014.
The main new provisions applicable to theater performances and scenic arts are:

- The tax credit rate has been raised from 18% to 20%, with a credit threshold amounting to €3 million.
- The tax rate has been brought down from 30% to 28% in 2015 and to 25% in 2016.
- A new credit was introduced for foreign productions, amounting to 15% of the expenses incurred in Spain, if the expenses incurred in Spain amount at least to €1 million. The total expense amount to which the credit relates includes all technical costs (related to production, directing or costumes), in addition to other supplementary costs (such as rental, cleaning or security costs).
- The addition of a new 20% credit in respect of the expenses incurred in the production and delivery of live scenic arts and musical shows.

5 Decision of February 22, 2016 by the Directorate-General of the Spanish Tax Agency (AEAT) publishing the Tax Control Plan for 2016 (BOE of February 23, 2016)

Designed with the fundamental aim of preventing and combatting tax fraud, the Tax Control Plan for 2016 is structured around three broad areas, (i) the audit and investigation of tax and customs fraud, (ii) the control of fraud in the collection phase and (iii) the collaboration with the tax authorities of the autonomous communities.


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