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VALENCIAN AUTONOMOUS COMMUNITY GOVERNMENT ENHANCES TAX INCENTIVES FOR AMATEUR SPORT PATRONAGE

JOSÉ MARÍA COBOS GÓMEZ

1. Protecting and encouraging amateur sport through tax instruments

Law 20/2018 of the Valencian Generalitat government, on cultural, scientific and amateur sport patronage in the Valencian autonomous community was published in the Official Gazette of the Valencian Generalitat Government on July 27, 2018, and entered into force the day after its publication. As discussed below, this law has enhanced the tax regime for this type of patronage, which has brought back to the table the option of using tax as a tool for encouraging sport.

The legal ground for that use may be found in the General Taxation Law, which states (in article 2) that besides their primary aim to obtain the necessary funds to sustain public expenditure taxes may be used as general economic policy tools and to achieve the principles and aims contained in the Constitution. And, in this respect, article 43.3 of the Spanish Constitution provides that "the governing powers shall encourage health education, physical education and sport. They shall moreover facilitate adequate use of leisure".

2. Autonomous community powers to encourage sport patronage through tax

The general framework for tax incentives for patronage within the scope of central government legislation is set out in Title III of Law 49/2002, of December 23, 2002 on the tax regime for not-for profit entities and on tax incentives for patronage, supplemented by the provisions in article 68.3 of the Personal Income Tax Law where the patrons are individuals. The structure is, therefore, as follows:

a) A tax credit of between 30% and 75% for amounts given to a number of beneficiary entities meeting given requirements. The percentages and limits may be increased by up to five percentage points for any activities characterized as priority patronage (the project *España compite: en la empresa como en el deporte* (Spain competes: in business and in sport), for example).

b) A 10% tax credit for amounts given to legally recognized foundations that report to a foundations commission, and to the associations granted public benefit status, not included in the previous paragraph.

The autonomous community governments may however exercise legislative powers to introduce specific tax credits to be deducted from the autonomous community component of the personal income tax liability. Various autonomous community governments have used these powers, and the following precedents in the field of sport patronage may be reported:

a) Balearic Islands: Balearic legislation establishes a tax credit for gifts, loans for use or commodatum contracts and collaboration agreements regarding sport patronage. This is a 15% tax credit on the estimated values of the gifts, loans for use or commodatum contracts, and on the amounts paid under collaboration agreements made in accordance with Law 6/2015, of March 30, 2015, on sport patronage and establishing tax measures. The tax credit is subject to a single maximum overall limit applying to all tax incentives for sport patronage, amounting to 600 euros per annum. Elsewhere, the tax credit may only be claimed if the combined amount of the general component of the taxpayer's taxable income and savings income is not above €12,500 on an individual return or €25,000 on a joint return. .

b) Canary Islands: a tax credit is established for gifts and contributions made to cultural, sport, research and teaching activities. The tax credit amounts to 15% of gifts in cash made to the public authorities of the Canary Island autonomous community government, Canary Island local government corporations and to any cultural, sport or research public entities attached to them, provided the funds are used to finance expenditure programs or steps aimed at the promotion, among others, of sport activities. Two limits are established: (i) the maximum tax credit calculation base, for these purposes, is €50,000 for a single tax period, and (ii) the amount of this tax credit may not go above 5% of the autonomous community component of the tax liability.

c) Murcia: the legislation contains a tax credit for gifts for the promotion of cultural and sport activities, which is incompatible with the central government tax credit. The incentive amounts to 30% of any straight gifts of cash made in the tax period towards the promotion of sport activities and received by any of the following entities: (i) the autonomous community for the Murcia region, together with the entities attached to the autonomous community public sector; and (ii) any foundations set up for exclusively cultural purposes, cultural and sport associations that have been granted public benefit status, and sport associations entered on the respective registers kept by the autonomous community government for the Murcia region.

3. Tax incentives for amateur sport patronage in the Valencia region

Law 20/2018 broadens and enhances the tax incentive that had already been established in Law 9/2014, of December 29, 2014 on furthering cultural patronage and activity in the Valencian autonomous community. The preamble to that law starts out by explaining that its aim is to further and encourage private patronage, voluntary activity that serves as a driver for participation and social responsibility, favoring greater freedom and cultural, scientific and sport diversity and contributing to promoting creativity, economic growth and enrichment of society's cultural capital. This shows how sport patronage is seen as another side of cultural patronage.

To this end, in article 6 a statement of intent is made according to which the Valencian Generalitat government will use tax incentives and benefits, within the scope of its legislative powers related to tax, to promote patronage activities.

The incentive is compatible with central government tax benefits and takes the form of a 25% tax credit in respect of gifts, or loans for use or commodatum contracts, all for purposes related to amateur sport, and the projects or activities need to have been granted or be treated as having "social interest" status for them to benefit from that tax incentive.

However, the calculation base for the tax credit, together which any established for donations related to Valencian cultural heritage and gifts made for the purpose of encouraging the use of the Valencian language, may not be above 30% of the taxpayer's net taxable income (*base liquidable*).

Article 3 of Law 20/2018 lists the individuals and entities who are allowed to be beneficiaries of the cultural, scientific and amateur sport patronage, notably including the following: (i) not-for-profit entities, domiciled for tax purposes in the Valencian autonomous community, and having a cultural, scientific or amateur-sport related purpose; (ii) the Valencian Generalitat government, its public agencies and the public sector serving the Valencian Generalitat government; (iii) local authority entities in the Valencian autonomous community, their public agencies, foundations and consortia which are attached to them; (iv) public and private universities in the Valencian autonomous community, their foundations and the colleges (*colegios mayores*) attached to them; and (iv) individuals resident and having their tax domicile in the Valencian autonomous

community who habitually engage in amateur sport activities. To avoid potential discrimination problems, either in Spain as a whole or in the autonomous community, it is specified that the following qualify as beneficiaries of the patronage under the law: individuals or entities objectively equivalent to those mentioned above and based in other autonomous communities, EU member states, or states associated the European Economic Area, who carry out projects or activities granted "social interest" status in the terms of this law.

Additionally, to be eligible for the tax incentives, the patronage activities must be carried out for cultural, scientific or amateur sport projects or activities granted or treated as having "social interest" status. Obtaining social interest status for amateur sport projects or activities is a requested procedure requiring an application to the authorities, and the *Consell Assessor del Mecenatge*, the assessment body of the Valencian Generalitat government for cultural, scientific and amateur sport matters, is responsible for making the proposals for granting social interest status to cultural, scientific or amateur sport projects and activities at the request of the beneficiary individuals or entities.

To secure adequate monitoring of this incentive it also lays down that, before the end of the year, the Valencian Generalitat government's patronage office, *Oficina del Mecenatge*, must send to the department for taxes an annual report on the projects or activities that have obtained social interest status.

Not every type of patronage is eligible for this tax incentive. The patronage must be provided in any of the following forms:

a) Straight gifts of cash, properties and rights.

b) Loans for use or commodatum contracts, meaning those related to property with cultural interest, inventoried property not granted cultural interest status, uninventoried property forming part of the cultural heritage, property with local importance or to quality assured works of art, and to premises for the performance of cultural, scientific or amateur sport projects granted social interest status.

The tax credit calculation base varies according to the type of patronage concerned, with a distinction being made between gifts, and loans for use or commodatum contracts.

The tax credit calculation base for gifts is that set out in central government Law 49/2002 with a few adaptations. It enhances the treatment of usufruct arrangements on real estate, however, by raising the percentage of the cadastral value from 2% to 4%. In the case of loans for use or commodatum contracts, the second type of patronage, the tax credit calculation base is:

a) In general, the annual amount is calculated by multiplying by 4%, in each of the tax periods over the term of the loan, the estimated value of the property made by the Valencian Cultural Heritage Property Valuation Board, determined pro rata to the number of days in each tax period.

b) In cases involving loans for use or commodatum contracts on premises for the performance of projects or activities 4% of the cadastral value is applied, pro rata to the number of days in each tax period.

Lastly, to claim the tax credit, evidence must be provided that the patronage activity was carried out under the relevant certificate issued by the beneficiary individual or entity of that patronage activity.

NO CIVIL LIABILITY FOR INJURY SUSTAINED IN FOOTBALL MATCH

Valencia Provincial Appellate Court judgment of February 14, 2018, on the absence of civil liability for injury caused by strong tackle in football match

EDUARDO SANTAMARÍA MORAL

Valencia Provincial Appellate Court has confirmed the decision dismissing the claim for damages brought by a player as a result of a tackle he received in a football match.

In a dispute for possession of a loose ball the claimant (center forward in the offensive team) was tackled by the goalkeeper in the rival team which caused him severe injury (fractured tibia and fibula). In the match, the tackle resulted in the referee issuing a warning (red card) and sending the player off the field.

The injured player nevertheless brought a claim with the courts of first instance against the causer, seeking damages for the days he was unfit to play and the after-effects he sustained as a result of that injury.

Valencia Provincial Appellate Court confirmed the decision dismissing the claim brought, on the basis, among others, of the following grounds:

- The fact of playing football, as a contact sport, entails the use of intense and aggressive mental and physical activity in which clashes between rival players are normal to keep or remove possession of the ball. It is therefore a high-risk activity.

- By voluntarily playing football, the player accepts and voluntarily subjects himself to the risk of injury that is involved in playing the sport.

- For the action to be able to determine the existence of noncontractual liability (under article 1,902, Civil Code) it would have to fall outside the acceptable scope and amount to behavior that is reckless to such an extent that it cannot reasonably be attributed to the conducted activity.

- In this case, no fault on the part of the causer of the examined act may be held to exist insofar as it has not been evidenced that an extraordinary act took place or that the causer failed to provide the required standard of care in any element of his conduct.

- The infringement of the rules observed by the referee (punishable foul) is not in itself a sufficient basis for upholding noncontractual liability beyond the disciplinary punishment that had already been imposed.

- Lastly, liability for semi-objective risk -as relied on by the claimant- cannot be upheld indiscriminately in relation to sport, because this would mean penalizing any sport-related activity simply because of the occurrence of injury in the course of that activity, which would not be consistent with either the law or the socio-cultural circumstances of society as we know it.

INVALIDITY OF ARBITRATION AGREEMENT RECOGNIZING JURISDICTION OF CAS CONTAINED IN FIFA STATUTES

Judgment by the Brussels Court of Appeal on August 29, 2018 (2016/AR/2048), on the invalidity -under Belgian law- of the arbitration agreement recognizing the jurisdiction of the CAS contained in the FIFA Statutes

EDUARDO SANTAMARÍA MORAL

The Brussels Court of Appeal in a proceeding on injunctive remedies brought by a Belgian football club found to be invalid the arbitration agreement contained in the FIFA Statutes (arts. 59 and 66) due to being a general agreement not restricted to a specific legal relationship.

Background

On March 6, 2017 a CAS arbitral panel handed down an award in relation to the sanction imposed by FIFA on a Belgian football club by reason of its breach of article 18bis of the Regulations on the Status and Transfer of Players (RSTP) in relation to TPO agreements.

That Award confirmed the validity of the FIFA prohibition of TPO (art. 18 bis RSTP) in addition to -partially- confirming the penalty imposed by FIFA on the club.

The club appealed against the award to the Swiss Supreme Court which dismissed the appeal.

The club, along with other interested parties, then filed with the Belgian courts an application for injunctive remedies against FIFA, UEFA, FIFPRO and the national Belgian association (URBFSA) to avoid the effects of the FIFA prohibition and the CAS award.

Relevant element of the debate (procedural issue)

In that proceeding on injunctive remedies one of the issues examined by the Belgian court was its jurisdiction to decide on the matter at issue (validity of the prohibition of TPO agreements contained in the FIFA legislation) due to an exception having being raised by FIFA, UEFA and URBSFA related to submitting the agreement to arbitration (referring to article 59 and article 66 of the FIFA Statutes)

This led the Belgian court to consider the validity of the arbitration agreement recognizing the jurisdiction of the CAS contained in those regulations.

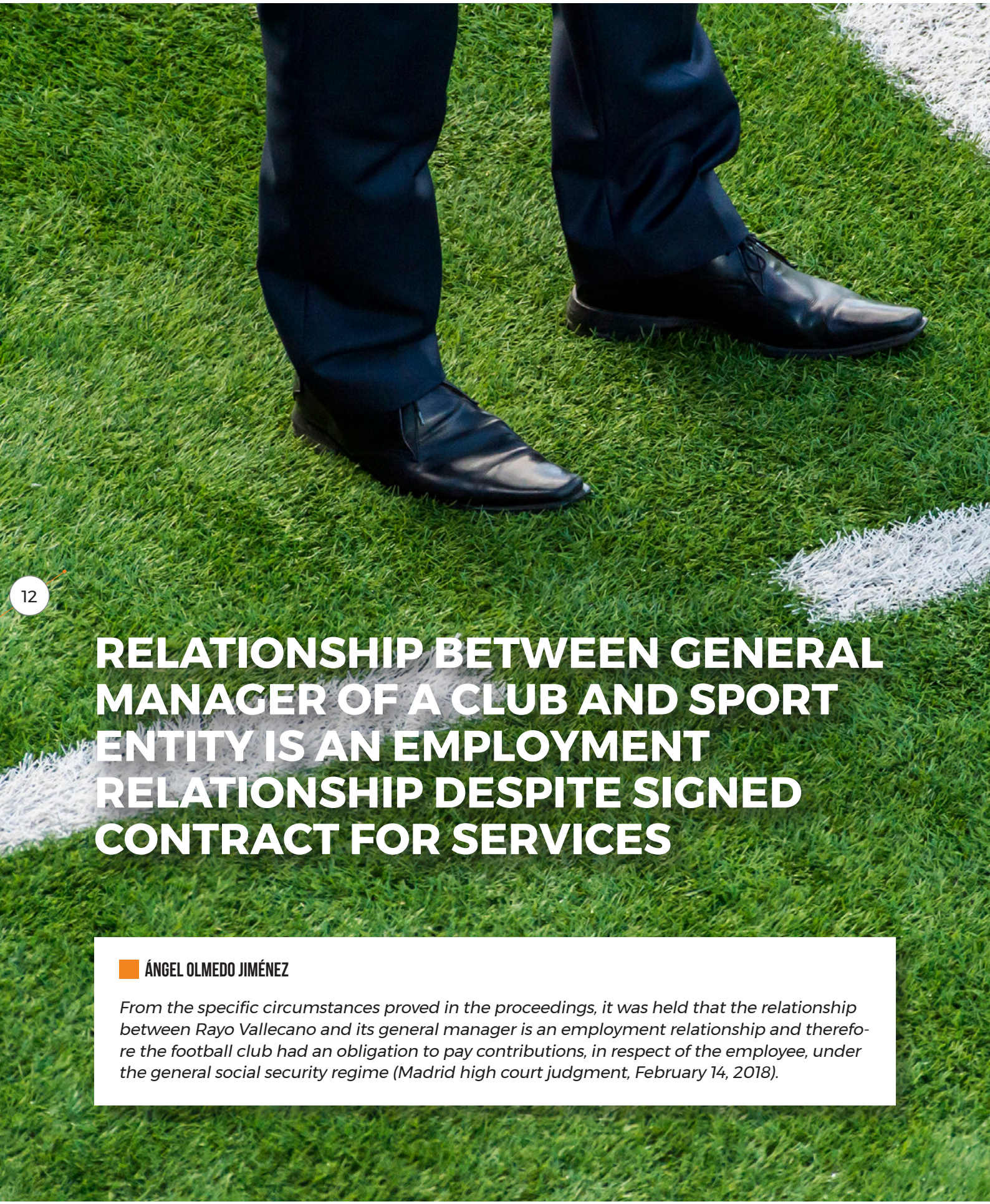
Content and scope of the judgment

After hearing the parties, the Brussels Court of Appeal ruled in its judgment that under Belgian law (article 1,681 of the *Code Judiciaire*) the arbitration agreement contained in article 59 and article 66 of the FIFA Statutes may not be regarded as an arbitration agreement recognized by Belgian law due to containing a general provision and not making any type of reference to a specific legal relationship.

In the court's opinion, article 1,681 of the Belgian *Code Judiciaire* clearly requires for an arbitration agreement to be valid that it must refer to disputes that have arisen or could arise between them with respect to a specific legal relationship, either contractual or noncontractual.

However, -continued the court- the arbitration agreement contained in article 59 and article 66 of the FIFA Statutes does not satisfy that requirement due to being a clause that relates indiscriminately to all future disputes that may occur between the parties, making it a general clause to which regard may not be had because it is not an arbitration clause recognized by Belgian law.

On that basis, the Belgian Court of Appeal disallowed the exception related to arbitration, invoked by FIFA, UEFA and URBSFA, although it denied –in relation to the merits at issue- the provisional measures applied for by the claimant against those associations.



RELATIONSHIP BETWEEN GENERAL MANAGER OF A CLUB AND SPORT ENTITY IS AN EMPLOYMENT RELATIONSHIP DESPITE SIGNED CONTRACT FOR SERVICES

ÁNGEL OLMEDO JIMÉNEZ

From the specific circumstances proved in the proceedings, it was held that the relationship between Rayo Vallecano and its general manager is an employment relationship and therefore the football club had an obligation to pay contributions, in respect of the employee, under the general social security regime (Madrid high court judgment, February 14, 2018).

1. Issue under debate

Madrid High Court confirmed the judgment by a lower court holding that the sport entity and its general manager had an employment relationship.

2. Facts of interest

Before the judicial claim, the general manager had signed three different contracts.

The first two were contracts for services, which had the following elements in common: (i) determination of a total amount of compensation, payable in monthly installments of identical amounts, (ii) the club's agreement to pay the costs incurred by the general manager as a result of providing his services, (iii) the requirement for the club's general manager to issue invoices in respect of the covenanted emoluments, and (iv) registration of the general manager for the social security regime for self-employed workers (RETA).

The first of these contracts set out that his functions were comprehensive advisory services, relating, in particular, to any relationships having to be conducted with the insolvency practitioners. Starting in December 2013, with the second contract already in force, a court judgment removed the insolvency practitioner as a result of the approval of proposal for an arrangement with creditors.

Starting in the 2014-2015 season, the parties agreed that their relationship would be governed by the statutory employment rules.

A claim was brought seeking a decision recognizing the existing employment relationship between Rayo Vallecano and its general manner, which was fully upheld and against which both the club and the general manager appealed.

3. Judicial interpretation

In the appeal proceeding, a first debate took place as to whether the lower court's judgment was null and void because it had not ruled on whether it was an ordinary or a senior management employment relationship.

On this specific point, the high court explained that the decision may not go beyond what was expressly requested by the parties which, in this case, was simply to obtain a declaration recognizing the existence of an employment relationship so the club would have to make social security contributions in respect of the employee, and pay the contributions it had not made.

In relation to the facts of the case, the judgment adopted the conclusions in the labor court's decision, arguing that sufficient evidence had been given to characterize it as an employment relationship, having regard to the following circumstances: (i) the services were provided on the club's premises, (ii) the sport entity provided all the materials to the general manager, (iii) the general manager was paid monthly compensation in identical amounts, (iv) he complied with a daily timetable from 9:00 to 14:00, (v) he had all his costs incurred by reason of his professional services paid, and, especially, (vi) the content of the functions performed which, in the 2014/2015 season, were behind the signature of an employment contract.

NEWS

GARRIGUES SPORTS & ENTERTAINMENT TAKES PART IN SPORTS LAW CONFERENCE IN PERU

A conference: *Qué pasó con Guerrero? Criterios del TAS y el Derecho Deportivo* (What Happened with Guerrero? CAS's Criteria and Sports Law) was held on June 6, organized by Universidad de Lima.

Franco Muschi, principal associate in the labor department at the Garrigues office in Peru gave a talk at the conference on the legal elements of a professional footballer's contract in which he also discussed issues related to the rulings of the Court of Arbitration for Sport (CAS), especially, the case of player Paolo Guerrero, who received a sanction for doping from that court.

GARRIGUES SPORTS & ENTERTAINMENT TAKES PART IN CONFERENCE ON PUBLICITY RIGHTS AND TAX EVASION IN SPORT

On September 18 Madrid Bar Association hosted a conference on publicity rights and tax evasion in sport, organized by Lawyerpress, for the presentation of a book: *Derecho Deportivo- Una Radiografía en sus aspectos más cruciales* (Sport Law- An X-ray of its most crucial elements).

Félix Plaza, partner in the tax department and co-head of Garrigues Sports & Entertainment, author of a chapter entitled Los derechos de traspaso y la tributación por la adquisición de jugadores a clubes extranjeros (Transfer fees and tax on the acquisition of players from foreign clubs), took part in the roundtable on the subject of the fallout from taxation on sport: La fiscalidad en el deporte, en la picota, in which various current tax topics were addressed such as the effect taxation can have on the competitiveness of the sports industry.

PRESENTATION OF THE MBA IN SPORTS BUSINESS & LAW AT CENTRO DE ESTUDIOS GARRIGUES

On October 1 Centro de Estudios Garrigues hosted the presentation of the MBA in Sports Business & Law, given jointly by Centro de Estudios Garrigues and LaLiga Business School.

Félix Plaza, partner in the tax department and co-head of Garrigues Sports & Entertainment took part together with Javier Gómez, general manager of LaLiga, and José Moya, principal of LaLiga Business School, in the presentation of the MBA, designed specifically to give complete training to future professionals in the industry, on all the more technically complex and topical subjects, which to date had never been addressed on a specialized curriculum.

GARRIGUES SPORTS & ENTERTAINMENT TAKES PART IN CONFERENCE ON ESPORTS

On October 18, conference was held on: *El hoy y el mañana de los eSports* (eSports: today and tomorrow), organized by Centro de Estudios Garrigues.

Félix Plaza, partner in the tax department and co-head of Garrigues Sports & Entertainment, Carolina Pina, partner in the IP department and co-head of Garrigues Sports & Entertainment and Ángel Olmedo, partner in the labor and employment department, took part in the conference, which gave the main eSports representatives in Spain the chance to speak and discuss at an event held to reflect on the current status of the industry and the best way to confront the challenges it will have to face over coming years, from legal and practical standpoints.

Judgments

1 Sport clubs are not always liable for accidents caused to spectators at football matches

Supreme Court judgment of March 7, 2018

The Supreme Court settled a cassation appeal lodged by a spectator who was hit in the eye by a ball launched from the playing field while she attended a warm-up before a match in the spectator stand behind the goal area. The appeal was against a lower court's judgment setting aside the indemnification sought by the claimant from the club.

Finding against the appellant, the Supreme Court declared its disagreement due to the absence of a legal causal relationship, insofar as the causal link related to the injury that had occurred disappeared when the appellant assumed a risk associated with the game, such as the risk that a ball could travel with greater or lesser force to the spectator stand. The risk that arose was not an unexpected or unusual risk for which the organizer must be liable, because the type of injury that occurred is frequent in pre-match warm-ups, and so the liability lies with the victim, who accepts this potential source of danger and must bear the related consequences. There is no liability for risk in this case.

The Supreme Court also ruled on the insufficiency of the types of prevention established in the regulations, which show negligence according to the appellant. It concluded in this respect that although the measures might indeed not be sufficient, this does not mean that whenever a harmful outcome occurs it must be liable for this reason, because such a conclusion is tantamount to strict liability for damage, which is not consistent with the system set out in article 1902 and article 1903 of the Civil Code.

2 Supreme Court recognizes right to public benefit status for sport and cultural association receiving revenues from services

Supreme Court judgment of March 19, 2018

The Supreme Court has settled a cassation appeal lodged by a cultural sport company against the national appellate court judgment that set aside the application for judicial review by arguing that the sport entity mentioned is not allowed to be granted public benefit status.

The company argued that it is a not-for-profit sport entity having as its primary purpose the encouragement, development and performance of physical and sport-related activities, which are activities and services available to anyone. It also submitted that its prices are determined by reference to the cost of the services provided and that the fact alone of receiving revenues in respect of services does not prevent it from being an activity aimed at serving the advancement of public interest.

The Supreme Court explained that the factor determining whether an activity is in the public interest is the use of the income obtained, rather than the simple fact of obtaining that income. The entity's primary purpose is the encouragement, development and continued performance of physical and sport-related activities, and the income it obtains goes towards achieving those goals, as provided in its bylaws. From this, added to the fact that the income from its activity does not benefit the members only, the court concluded that it had to uphold the lodged appeal and grant the appellant the right to public benefit status.

3 Court order against sellers of sportswear and tracksuits with symbols showing two or three parallel lines

Zaragoza Provincial Appellate Court judgment of April 6, 2018

Appeals were filed by the parties who had received a court order at first instance (two individuals), and by the Adidas brand, against the judgment by Zaragoza Criminal Court number 1.

In that judgment the defendants were ordered to indemnify the brand as the parties liable for an offense against industrial property, due to having imported from China shirts with the brand's logo and the anagram of a specific football club, without the brand's authorization and with the intention of making money from them. The shirts were seized by customs authorities.

The provincial appellate court dismissed the grounds pleaded by the defendants: (i) error by the supplier who sent shirts instead of trousers, given that there are no documents proving this; (ii) lack of surveillance of the packages in which the shirts came, given that a general affirmation is not sufficient, because specification must be given of the times, as a result of what activities, and to what extent, the

alleged interruption took place, and none of these points were specified, for which reason the proof consisting in the testimony of the people in charge of the customs warehouse was not refuted, and there is no record of any irregularities when they were opened; (iii) the principle of presumption of innocence was breached due to error in the evidence, refuted together with the first ground pleaded, and (iv) that there was no risk of confusion between the seized shirts and the originals. The provincial appellate court explained that the small price and the low quality of the materials and seams that were pleaded were irrelevant, because they have no bearing in relation to whether the distinctive sign on the garments was identical or able to be confused with those protected by the industrial property right in those signs.

In relation to the appeal lodged by the brand, which was based on the estimated value of the damage and losses caused, the provincial appellate court confirmed the interpretation in the lower court's judgment.

4 Constitutional Court finds in favor of Catalonia in relation to distribution of powers over sport matters between Spanish central government and Catalan Generalitat government

Constitutional Court judgment of April 12, 2018

The Constitutional Court partially upheld the appeal based on unconstitutionality lodged by the Catalan Generalitat government against several articles of Law 15/2014, of September 16, 2014 on rationalizing the public sector and other administrative reform measures, by considering they had an adverse effect on its powers.

The Generalitat pleaded that its powers over sport matters as an autonomous community government had been breached by the establishment of a system granting a single sport license; the rules on a single official notice board; and the rules on the national subsidies database, as the intermediary authority to which an extract of the call for applications in the relevant official gazette must be served for its publication, with the related penalty regime.

On the basis of those arguments, the Constitutional Court held that the comments related to the national subsidies database regarding the term "intermediary" (por conducto) and the function of serving "the extract of the call for applications in the relevant official gazette [...] for its publication, which will be for no consideration" are unconstitutional, without limitation to applying to the other authorities subject to the General Subsidies Law, given the disturbance that the national subsidies database may cause to the actions of the autonomous community government.

In relation to the other challenges submitted, the Constitutional Court dismissed the Generalitat's claims by arguing that:

- Article 23, giving new wording to article 32.4 of Sport Law 10/1990, of September 15, 1990, which contains provisions on the single sport license, sets out a new interpretation to clarify that where the law states that "for participation in any official sport competition, in addition to satisfaction of any requirements laid down in each case, under the competition rules in force, it will be necessary to be in possession of an autonomous community sport license ..." it must be regarded as relating only to central government competitions.

- Points seven and nine of article 30 make it impossible to impose a penalty payment on the autonomous community governments, under the new interpretation of the article.

5 National Appellate Court refuses to set aside or reduce the minimum amount of a sanction imposed on a sport club for breaching security measures

National Appellate Court judgment of April 18, 2018

The National Appellate Court dismissed the application for judicial review filed by a sport club against a decision rendered on January 27, 2016, by the Secretary of State for Security, which dismissed the appeal lodged against the decision imposing a monetary fine for a very serious infringement as a result of throwing a sparkler during a sport competition.

The appellant asked for the imposed sanction to be set aside, or secondarily for the minimum amount to be reduced, arguing that it is uncertain whether the appellant breached the necessary security measures, and questioning the proportionality of the sanction.

The National Appellate Court held that, although security measures were adopted these were not sufficient or suitable to prevent the incidents and, besides, others were decided, such as opening the accesses before the end of the competition, which were not justified in any way and were counterproductive, in view of the risk that was caused.

With respect to breach of the principle of proportionality and reasoning, it dismissed the submitted arguments, insofar as the sanction is within the range set out for very serious infringements -between €60,001 and €650,000 -, by reference to the entity's negligence on the one hand plus the specific risk circumstances of the event.

6 Supreme Court submits request for ruling on unconstitutionality regarding article of General Audiovisual Communication Law 7/2010 regulating amount of economic compensation for radios' access to stadiums

Supreme Court decision of April 23, 2018

Spanish professional football league LaLiga filed an application for judicial review with the National Appellate Court against a decision by the Telecommunications Market Commission settling a dispute between ratio stations and LaLiga over how to determine the amount of economic compensation recognized in article 19.4 in respect of access for radio audiovisual media services to stadiums and premises to broadcast live coverage of sport events (85 euros).

LaLiga took the view that article 19.4 must be rendered null and void due to being precluded by European law and the Spanish Constitution, in particular article 33 (ownership rights) and article 38 (free enterprise). It also questioned the determined amount (it was asking for 142 euros). The National Appellate Court partially upheld the application, reducing the amount to 100 euros, although it held that the provision was lawful.

LaLiga lodged a cassation appeal against the national appellate court judgment, in relation to which the Supreme Court had doubts over the constitutionality of the provision contained in article 19.4, by arguing that it may be precluded by the ownership right (article 33, Spanish Constitution) and potentially free enterprise (article 38, Spanish Constitution) in relation to freedom of contract, because by giving the radio operators access to stadiums to broadcast live coverage of sport events, and restricting the economic compensation that the holders of the broadcasting rights may receive in respect of the costs associated with exercising that right and for use of the cabins provided for the purpose, it is preventing LaLiga or the clubs from being able to sell and exploit exclusive live broadcasting rights for sport events. As a result, the Supreme Court ruled to file the request for a ruling on unconstitutionality.

7 No upper limit on penalties related to market price reported on personal income tax return

TEAC decision of May 10, 2018

The appeal originated from a personal income tax audit in which it was determined that the interested party was sole member and sole director of a company, which only carried out operations related to the member's activity as an artist. A notice of assessment was issued in respect of the differences between the audited market value and the compensation received from the company in respect of the activity carried on by the member. A penalty proceeding was initiated, which ended with a penalty amounting to 15% of the amount resulting from the pricing adjustment.

TEAC determined that the required penalties where pricing adjustments are needed must be higher than the penalties that would be required where there is no pricing adjustment. The earlier interpretation by the regional economic and administrative court (TEAR) would give worse treatment to anyone that made minor infringements (breaches of reporting obligations) with respect to anyone that made more serious infringements (breaches of reporting obligations, plus the need for pricing adjustments by the tax authorities). The penalty determined in article 16.10.2° of the former Corporate Income Tax Law (TRLIS) consisting of a proportional fine equal to 15% of the amount of the pricing adjustments needed to each transaction, has a lower limit (twice the penalty that would result from article 16.10.1, TRLIS), but no upper limit.

8 General Court of the European Union stays enforcement of measures under Commission Decision on state aid to Elche

Order of the President of the General Court of May 15, 2018

The Commission Decision held that this football club together with Valencia and Hércules had to repay the aid granted by the government - public guarantees provided by Instituto Valenciano de Finanzas to secure a number of bank loans - as a result of being incompatible with the internal market.

The President of the General Court stayed enforcement of this measure on Elche, until a final judgment is rendered by the Court on the appeal lodged by the club, among other grounds, as a result of having shown that the urgency requirement exists as a result of the risks to its financial viability.

9 National Appellate Court rules on expiry of penalty proceeding by Spanish Disciplinary Committee for Sports

National Appellate Court judgment of May 17, 2018

The National Appellate Court has ruled on an application for judicial review against the judgment by the Central Judicial Review Court, in which it confirmed the decision by the Spanish Disciplinary Committee for Sports imposing a sanction on the chairman of the Spanish tennis association (Real Federación Española de Tenis), disqualifying him for two years, as a result of a serious infringement under article 76.4.a) of the Sport Law.

The appellant took the view that the penalty proceeding that gave rise to the process had expired, due to more than three months having run since the penalty proceeding started on March 6, 2015, until it was concluded on September 25 of the same year.

That reasoning was shared by the National Appellate Court which held that the penalty proceeding had expired, given that the delays that had occurred in the proceeding related to the failure to notify the interested party were not attributable to the appellant, who was on work/life balance leave at that time and, therefore, his functions as association chairman were temporarily interrupted, so he was unable to receive at the tennis association's headquarters any personal notification concerning his status as chairman.

10 Court finds that barring entry of Catalan "esteladas" republican flags to a football stadium is not an infringement of fundamental rights

Madrid High Court judgment of May 28, 2018

An application for judicial review was filed with Madrid High Court in relation to an infringement of fundamental rights as a result of the Madrid government delegate ordering the law enforcement agencies not to allow any political propaganda or politically controversial materials to be brought into the Vicente Calderón stadium on the day of the final of the Copa del Rey competition. In particular, she ordered seizure of all Catalan *esteladas* republican flags.

Madrid High Court argued that carrying these elements is an expression of the rights to ideological freedom, although this does not prevent measures from being able to be adopted to maintain order at a specific event. Considering that the match had been classed as high risk, prohibiting the carrying of political materials is justified to avoid alterations of public order, and therefore the measure adopted by the government delegate was, in the court's view, justified.

11 Supreme Court confirms exclusion of the candidature of the chairwoman of Galician Taekwondo association in elections for General Assembly of the Spanish association

Supreme Court judgment of Monday, June 04, 2018

The Supreme Court dismissed the application for judicial review filed by the chairwoman of the Galician Taekwondo association (Federación Gallega de Taekwondo) as a result of exclusion of her candidature to the General Assembly of the Spanish Taekwondo association (Federación Española de Taekwondo).

The applicant founded the application on two pleadings, i) an infringement of article 5 and article 6 of Order ECI/3567/2007, regarding the requests for the specification of facts to the Galician association, based on the applicant's argument that the Spanish association was requesting from the autonomous community association data that it already possessed, and ii) the Spanish association had not observed the required form for publishing the national provisional list, because, the applicant pleaded, it was only published at the headquarters of the Spanish association without sending it to the relevant regional associations, with an infringement of article 11.6 of Order ECI/3567/2007 and article 6 RETE.

The Court set aside the application on the basis that the Galician association did not comply with the request for the specification of facts, and therefore did not assume the procedural burden of specifying, clarifying, founding or arguing the grounds for claims, besides considering that the Galician association had not shown any willingness to cooperate with the authorities, by sending large amounts of information that was not ordered or by introducing athletes that were already on the list. Moreover, it concluded that the Galician association did not explain the interest it had in the lists for the other regions because the Spanish association only has an obligation to send to each region their own list.

Ruling requests

1 DGT clarifies whether hiring bonus can be reduced by 30%

DGT binding ruling V2661-17, of October 18, 2017

The request concerned whether the bonus paid to a worker, known as a hiring bonus, is eligible for the 30% reduction envisaged in article 18.2 of the Personal Income Tax Law.

The DGT explained that the paid bonus is gross salary income for the employee. With respect to the reduction to income, the DGT first highlighted the absence of a period of time in which the right to receive that income was generated, since it was treated as an additional pay element to be received at the start of the employment relationship, and so, after ruling out the generation period, the DGT examined whether it related to any of the cases of clearly multiyear income (article 12.1 of the Personal Income Tax Regulations), and concluded that it does not fall within any of those cases and therefore the bonus may not be reduced.

2 DGT characterizes the prizes obtained by participant in pigeon shooting competition as capital gains

DGT binding ruling V0704-18, of March 15, 2017

DGT analyzed the taxation for personal income tax purposes of the prizes received by a participant in a pigeon shooting competition in various national and international competitions:

- From the standpoint of the payer of the prizes, they must be characterized as income from economic activities subject to withholding, specifying that the view held in this respect by the DGT is that both "fixed" income and the prizes that the organizers/sponsors of sport competitions pay to the participants must be treated as income from professional activities, unless there is an employment relationship, in which case they are characterized as salary income.

- From the recipient's standpoint, the prizes may be treated as income from economic activities where the sport activity in which they were obtained amounts to an economic activity for the recipient of the prize (requirements under article 27 of the Personal Income Tax Law). If the established requirements are not satisfied, the prizes must be characterized as capital gains, if there is no employment relationship; and this, regardless of how they are characterized for the payer's purposes.

3 The activities carried on by an athlete signing sport sponsorship agreements are subject to VAT

DGT binding ruling V0702-18, of March 15, 2017

The DGT considered that the requesting party provides a service to the companies consisting of licensing the right to use its image. For that reason the license for consideration is subject to VAT.

As regards when the VAT becomes chargeable (article 75.one.7 of the VAT Law), due to being a service of an ongoing nature, VAT will become chargeable when the portion of the price for each amount received is payable, although, where the payment has been determined at intervals longer than a year, VAT will be chargeable on December 31 of each year.

As regards the deduction of input VAT, the right to deduct VAT will only arise if the acquired goods and services are used directly and exclusively for its activity. Otherwise, it cannot be deducted, unless it relates to capital goods, in which case partial use of those goods will give entitlement to partial deduction of the VAT (under article 95).

Lastly, as regards the characterization of the income for personal income tax purposes, group 04 of section three of the tax on business activity classifications includes activities related to sport, and therefore the income obtained when carrying on its activity is characterized as income from economic activities, including any that might be obtained from sponsors. The simplified direct assessment method is applicable.

4 Professional services provided by a company to non-EU resident professional footballer are subject to VAT

DGT binding ruling V0802-18, of March 22, 2017

The request concerned whether the sport advisory, mediation and agency services provided to the requesting taxpayer, a professional footballer under an employment contract with a sport club, were subject to VAT.

The DGT considers that, under article 4.One and article 5 of the VAT Law, both the professional athlete and the company

acting as his agent have trader or professional status for VAT purposes. Therefore, the services provided by the company are treated as being subject to VAT if they are performed in the territory of application of the tax.

The DGT concluded that the sport advisory, mediation and agency services provided to the athlete are deemed to take place when those services are provided, executed or performed, and, in all cases. Where those services give rise to advance payments before the occurrence of the taxable event, the tax becomes chargeable when all or part of the price is collected in respect of the amounts actually received.

5 DGT explains how VAT becomes chargeable on mediation and agency services for professional athletes

DGT binding ruling V1085-18, of April 25, 2018

The requesting taxpayer is an individual who is the sole member of an entity carrying on intermediation activities in relation to entering into, renewing or terminating contracts for artists and athletes. The requesting taxpayer provides, in turn, services as agent for athletes to that company.

The individual member of the requesting taxpayer is a trader or professional according to the definition provided in article 5 of the VAT Law, if he organizes a set of human and material resources, independently and under his responsibility, to carry on a business activity, and his activity is characterized as a supply of services (article 11).

VAT becomes chargeable on advisory, mediation and agency services when those services are provided, executed or performed. It must be highlighted, however, that where those services give rise to advance payments before the occurrence of the taxable event the tax will become chargeable when all or part of the price is collected and on the amounts actually received.

6 The contributions made by autonomous community football associations to amateur football clubs for the performance of the sport are not subject to VAT

DGT binding ruling V1406-18, of May 28, 2018

Royal Decree-Law 5/2015, of April 30, 2015, on urgent measures in relation to the sale of exploitation rights for audiovisual contents of professional football competitions lays down that the clubs and entities participating in the national league championship (Campeonato Nacional de Liga) must contribute a compulsory percentage of the revenues obtained from selling the audiovisual rights, which will be distributed among the autonomous community associations for these, in turn, to use them to further amateur football. It is in relation to these contributions that a request for a ruling was submitted to the DGT regarding their treatment for VAT purposes.

To reply to the request, the DGT explained that the CJEU's case law must be taken into account (judgments of February 29, 1996, Case C-215/94, Mohr, and of December 18, 1997, Case C-384/95, Landboden, and of March 3, 1994, Case C-16/93, Tolsma), which establishes that for a transaction to be subject to VAT there must be consumption and that a supply of services is only for consideration if there is a legal relationship between the provider and the recipient pursuant to which there is reciprocal performance and the remuneration received by the provider of the service constitutes the value actually given in return for the service supplied to the recipient.

Therefore, any contributions the association makes to the amateur football teams to perform the obligations imposed by those rules do not qualify as consideration for any transaction subject to VAT, and are therefore not subject.

7 Fees paid by golf course members for services and maintenance are subject to VAT and form part of the corporate income tax base

DGT binding ruling V1393-18, of May 28, 2018

The requesting taxpayer operates a golf course business, in which members use the premises to play golf in return for the payment of fees for services. The requesting taxpayer is running a loss-making business, so the members have to pay in respect of maintenance of the facilities another fixed fee at the various members' meetings even if they do not use the facilities.

In relation to corporate income tax, the income obtained from maintenance fees paid by the members must form part of the tax base, in all cases, regardless of whether a special regime is applied, such as the regime for enterprises of a reduced size, for example.

In relation to VAT, it does not qualify for any of the exemption scenarios contained in article 20, paragraph one, of the VAT Law. The applicable VAT rate is the standard 21% rate, because the reduced rate has not been applicable to these cases since September 1, 2012. The tax base consists of the whole amount of the consideration.

8 Compensation of referees and judges providing services in activities organized by a sport association is salary income, subject to withholding tax

DGT binding ruling V1780-18, of June 19, 2018

According to the definitions in the Personal Income Tax Law of salary income (article 17) and of economic activities (article 27), the DGT characterizes as salary income any received by referees from the relevant sport associations in respect of performing their work, since the organization for their own account of the means of production and human resources, or either of the two, is not present, which would give rise to economic activities.

As regards the withholding tax rate to apply and the procedure to be implemented, it has to be calculated by reference to the provisions in article 80.1.1, article 82 and article 81.1 of the Personal Income Tax Regulations.

Legislation

1 Decision rendered by the Chairperson-in-Office of the National Sports Council on May 22, 2018, publishing the amendment to the bylaws of the Spanish wingshooting association (Real Federación Española de Tiro a Vuelo)

2 Decision rendered on June 12, 2018, by the Chairperson-in-Office of the National Sports Council, on the list of high-level athletes relating to the first list for 2018

3 Decision rendered on June 22, 2018, by the Chairperson-in-Office of the National Sports Council, granting recognition to sport training activities related to canoeing and kayaking at level I, II and III, authorized by the Directorate General for Sport in Asturias and given by the Asturias kayaking and canoeing association (Federación de Piragüismo del Principado de Asturias)

4 Decision rendered on June 22, 2018, by the Chairperson-in-Office of the National Sports Council, publishing the contract with the Leisure and Culture Group at the National Sports Council, for increasing the performance of sport and joint activities among the agency's employees and their family members

5 Decision rendered on August 2, 2018, by the subsecretary, publishing the contract between the Ministry of Finance and the Civil Service, the National Sports Council, and foundation Fundación Navegación Oceánica de Barcelona, for the creation of the Joint-Authority Commission for the fourth edition of the Barcelona World Race, an event granted exceptional public interest status

6 Decision rendered by the Chairperson-in-Office of the National Sports Council on August 23, 2018, publishing the amendment to the bylaws of the Spanish bowling association (Federación Española de Bolos

7 Decision rendered by the Chairperson-in-Office of the National Sports Council on August 23, 2018, publishing the amendment to the bylaws of the Spanish hunting association (Real Federación Española de Caza)

8 Decision rendered by the Chairperson-in-Office of the National Sports Council on August 23, 2018, publishing the amendment to the bylaws of the Spanish golf association (Real Federación Española de Golf)

9 Decision rendered on August 24, 2018 by the Chairperson-in-Office of the National Sports Council, publishing the financial statements for 2017 and the auditor's report

10 Decision rendered on September 6, 2018, by the Chairperson-in-Office of the National Sports Council, publishing the contract with Tarragona city council, for financing the organization costs of the Mediterranean Games Tarragona 2018

11 Decision rendered on September 6, 2018, by the Chairperson-in-Office of the National Sports Council, on the inclusion of the types of adult education activities to be included in the Adult Sport Education Program for the 2018-2020 period

12 Decision of September 18, 2018, by the Chairperson-in-Office of the National Sports Council, publishing the bylaws of the Spanish automobile association (Real Federación Española de Automovilismo)

13 Decision rendered by the Chairperson-in-Office of the National Sports Council on September 26, 2018, publishing the amendment to the bylaws of the Spanish athletics association (Real Federación Española de Atletismo)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