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IT MAY BE AGREED TO PAY SEVERANCE FOR TERMINATION OF AN ATHLETE'S CONTRACT OVER THE TERM OF THE CONTRACT

Navarra high court validates a contractual clause allowing severance for termination of the professional athlete's contract to be paid on a pro rata basis in advance.

ÁNGEL OLMEDO JIMÉNEZ

1. Issue under debate

The Navarra high court judgment of December 20, 2018 examined whether a clause was valid which determined that the club would pay in advance and on a monthly basis a number of amounts in respect of an advance payment of the potential severance to which the cyclist might be entitled by reason of termination of the agreed term.

2. Facts of interest

The cyclist had been providing services to the club since January 1, 2012, and had signed three employment contracts, the first for one, the second for three and the third for one season.

In the last of these contracts, signed in the presence of the cyclist's agent, the cyclist's annual salary was €170,000, and it stated that "*of the amount to be received in the last year of the valid term of the contract, the parties agree to deduct the severance to which they are entitled by law on termination of the contract*".

At the end of September 2016, the club notified the cyclist that his contract would be terminated on December 31 that year. In that same month, the cyclist announced he had been signed by another cub.

After his employment contract had been terminated, the cyclist filed a monetary claim, asking for the club to pay him the severance to which he was entitled as a result of termination of his temporary contract.

In the 2016 season, the club paid the cyclist, in respect of "severance under RDL 10/2010, transition provision 13", an aggregate sum of €20,027.34.

At first instance, Pamplona labor court number 1 partly upheld the claim, and ordered the club to pay the cyclist €931.41 (difference between the amount already received in respect of severance and the statutory severance payment).

In disagreement with that conclusion, the cyclist submitted an appeal by arguing that the amount that should be paid to him is 12 days' salary per year of service, which would total €27,945 and the Club was not allowed to deduct the amount paid to him earlier over the course of his employment relationship.

3. Judicial interpretation

The Court dismissed the cyclist's appeal fully and based its reasoning on the following elements:

a) It firstly rejected that he was entitled to severance equal to 12 days' salary per year of service, instead of 9 days' salary (which is that adopted by the labor court), on the basis of transitional provision 13 of Royal Decree-Law 10/2010 (now set out in transitional provision eight of the Workers' Statute), because the first of the contracts was signed in 2012.

b) Secondly, the decision dismissed the cyclist's pleading that by calculating the severance payment for termination of the contract on a pro rata basis the Club had acted unlawfully, for the following reasons:

    a. The contractual clause setting out an annual salary of €170,000 determined that the amount related to both salary and to "another type of compensation", and expressly stated that this could be "the severance to which the worker might be entitled on termination of the agreement".

    b. There is no law preventing distribution of the severance payment for termination of a contract into monthly amounts.

    c. The cyclist was well aware of the scope of the clause, because he was assisted by his agent when he signed the employment contract, and he had received every month in the 2016 season, an amount in respect of "severance under RDL 10/2010, transition provision 13".

So the court decision validated the lower court's judgment and retained the order for payment by the club, only with respect to the amount required to bring the sum paid over the term of the employment contract to the amount of severance for termination of the agreement.

A PROFESSIONAL ATHLETE IS ENTITLED TO RECEIVE SEVERANCE FOR A FIXED-TERM CONTRACT WHEN IT ENDS

ÁNGEL OLMEDO JIMÉNEZ

1. Issue under debate

On an issue that had been the source of varying conclusions by the high courts, the Supreme Court (judgment of May 14, 2019) has crafted its interpretation, settled in the judgment of March 26, 2014, which accepts that professional athletes are entitled to receive the severance, unless termination of the contract was by their decision or had their agreement, and does not allow the high level of compensation received to be used as an element to eliminate that entitlement.

2. Facts of interest

The football player had signed separate contracts for specific seasons with his Club.

The player's compensation was higher than the average compensation for players in the second division, the category in which the footballer's team played, and higher than the amount determined in the collective labor agreement.

On termination of his employment relationship with the club, the player was signed by another team, in the same category as his previous team.

The worker filed a claim against the club with a labor court, seeking the severance payment for fixed-term contracts under article 49.1.c) of the Workers' Statute, which amounted to €34,576.25.

His claim was dismissed at first instance, and on appeal. The primary argument used to refute the player's claims was that it had to be taken into consideration that he was an "elite athlete", and for these types of athletes the official judicial interpretation did not allow the claimed entitlement to severance.

3. Judicial interpretation

The player disagreed with these conclusions and filed a cassation appeal for a ruling on a point of law which the Supreme Court upheld, based, for the main part, on the following arguments:

a) The Supreme Court revisited the key points of its judgment of March 26, 2014 which, briefly, concerned the compatibility of the statutory severance for fixed-term contracts with the particular characteristics of the contract of professional athletes, since the aim of the severance is to give greater stability to the contract or, in other cases, to serve to reduce the adverse consequences of the precarious position in which workers of this type may find themselves.

b) The decision also gave an important technical rundown of the judgments (Supreme Court, of December 20, 2016 or Court of Justice of the European Union, of February 26, 2015 and October 25, 2018) which support that non-discriminatory treatment must be offered, in relation to this particular matter, to employees with a special employment contract.

c) Additionally, the Supreme Court stressed that the severance payment cannot be made to depend on the player's greater or less amount of compensation.

d) As it had done in its judgment of March 2014, the court recalled that the severance payment does not fall due where the failure to renew the contract results from a decision by the professional athlete or with his agreement.

Therefore, after determining these points, the Supreme Court acknowledged the worker's entitlement to receive the claimed severance, set aside the judgment and found to be applicable the judicial interpretation related to the principle of contradiction (Aragon high court judgment of March 25, 2015.

The judgment had a dissenting vote arguing that the severance cannot be applied generally to all professional athletes. And, in relation to the discussed case, it upheld that the fact of previous renewals having taken place between the parties, of the player being aged 35 (at the end of his sporting career, in other words), of the player signing with another club (in the same category) simultaneously and the level of his compensation all pointed to the conclusion that the entitlement to receive the severance on termination of his contract should not have been accepted.

NOTICIAS

GARRIGUES SPORTS & ENTERTAINMENT PARTICIPATES IN CONFERENCE ON THE TAXATION OF SPORTS ENTITIES, ORGANIZED BY COLEGIO DE ECONOMISTAS DE CATALUÑA

On March 16 a talk on the subject of the taxation of sports entities was given at Colegio de Economistas de Cataluña, by Diego Rodríguez, partner in the Garrigues tax department and co-head of Garrigues Sports & Entertainment, together with other Garrigues professionals.

The aim of the talk was to identify the key characteristics of the legal entities acting in the industry, know the applicable tax regime, discuss specific key VAT issues and study the tax regime for patronage activities for sports entities.

TELEMADRID FILMS AT CENTRO DE ESTUDIOS GARRIGUES

In April Telemadrid broadcast **a feature filmed at Centro de Estudios de Garrigues on footballer Xavi Prieto**, student on the SBA Sport Business Administration program organized by Centro de Estudios Garrigues, in conjunction with LaLiga.

In his role as program director, Félix Plaza, partner in our tax department and co-head of Garrigues Sports & Entertainment, was also interviewed on the program.

IKER CASILLAS ATTENDED THE END OF YEAR CEREMONY FOR MBA IN SPORTS BUSINESS & LAW

The end of year ceremony for the MBA in Sports Business & Law was held on June 26.

Félix Plaza, partner in the Garrigues tax department and co-head of Garrigues Sports & Entertainment, took part at the ceremony, attended by Iker Casillas, who delivered an emotive address to the graduating students. Also present were Javier Tebas, LaLiga chairman and José Moya, principal of LaLiga Business School.

Judgments

1 Supreme Court declares to be null and void the real estate tax charged to Real Madrid on its training complex in Valdebebas

Supreme court judgment of March 5, 2019

The Supreme Court has upheld the cassation appeal lodged by Real Madrid, which considered to be unlawful the real estate tax charged by Madrid city council on is training complex in Valdebebas.

Thec pleaded that the rendering null and void of the Madrid Master Plan had made the real estate tax assessments null and void, because they were issued according to null and void provisions. Madrid city council pleaded that because a piece of non-developable land had already been developed, the cadaster must treat is as urban land, and the cadaster's appraisal is mandatory for the city council. The Supreme Court held that the decision to render it null and void has erga omnes and ex tunc, effects and therefore the Valdebebas complex's land recovered its classification as non-developable land and was not able not to be treated as urban land by the cadaster.

The court concluded by looking at the difference between the management of cadaster matters and the management of tax matters, for which the connecting factor is the taxable amount (the cadastral value and, as applicable, the urban or rural nature of the land). The cadastral value is final except in exceptional circumstances based on superior principles, which was the case here.

2 FC Barcelona did not demean the reputation of a law firm in comments about its tax advice on the signing of a player

Barcelona provincial appellate court judgment of March 11, 2019

The provincial appellate court dismissed an appeal lodged by a law firm that believed there had been interference with its right to reputation, in terms of its professional image, caused by the statements made by members of management of FC Barcelona in their comments about the advice received on the signing of a player.

The appellant pleaded that because they did not participate in the design of the player's contract, by associating their firm with the contract and discussing their misguided conduct in successive press conferences and radio programs, the respondents had attacked their right to reputation and should be ordered to indemnify them and remove all trace of the alleged criticisms. The appellate court discussed the Supreme Court's interpretation of the right to reputation and the freedoms of expression and information and examined the substance of the statements to conclude that there had been no interference whatsoever and therefore it had to set the appeal aside.

3 The limit on tax credits for events of exceptional public interest is 90% of the gifts made to the consortium over the length of the program

TEAC decision 01994/2016/00/00 of March 11, 2019

TEAC upheld the filed economic-administrative claim, after finding unlawful the administrative decision for the assessment of corporate income tax rendered by AEAT's central office for large taxpayers.

The appellant pleaded that the credit for programs to support events of exceptional public interest equal to 90% of the gifts made to the consortium concerned must be calculated by reference to the aggregate amount of the gifts made to it over all the years it had supported the event, as the DGT had found in an earlier binding resolution of a submitted issue. The supreme court judgments that appear to set a yearly amount as a limit are not applicable because they refer, more specifically, to how to calculate the upper limit on the credit to be claimed in a year. TEAC held that the tax credit base and limit are not the same thing.

And concluded, according to the DGT's interpretation, that the tax credit that may be claimed, after determining the amount used to calculate the credit, cannot exceed 90% of the gifts made over the whole length of the program, which may be up to three years.

4 LaLiga is authorized to monitor compliance with all the various types of requirements laid down for the clubs' licenses

Supreme court judgment of March 12, 2019

The Supreme Court dismissed the cassation appeal lodged by the Spanish footballers' association (AFE - Asociación de Futbolistas Españoles), which considered unlawful LaLiga's refusal to give provisional validation to the professional footballer's license for a player in Getafe C.F SAD due to a breach by the club of the limit on salary cost.

The AFE pleaded that, according to the Spanish Sports Law and the Regulations on the special employment relationship of professional athletes, LaLiga has been granted the power deny the validation by reason of a breach of the sport-related requirements for issuing it, but does not have the authority to deny the validation of a player when a salary limit has been overstepped. For its part, the court held that it is not inferable from the legislative provisions on this matter that the requirements for accepting or refusing the validation are of a strictly sports nature only, quite the opposite in fact.

The Supreme Court determined that LaLiga is authorized to carry out broad protection, monitoring and supervision activities in relation to its members, and among them monitoring the requirements to be met in the license application procedure, including the financial requirements, which makes the boundary between sport-related and financial requirements that was being sought by the appellant impossible.

5 Madrid High Court confirms suspension of the federative rights of Real Avilés and the bar from applying for licenses

Madrid high court judgment of March 20, 2019

Madrid High Court dismissed the appeal lodged by Real Avilés C.F. S.AD. against the Spanish Disciplinary Committee for Sports' (TAD) decision dismissing the application to render invalid the decision ordering suspension of the club's federative rights and barring it from applying for licenses.

The appeal was based first on the fact that the players' contracts had been signed by Real Avilés G.D., a commercial company engaged to manage financial and sports matters. The high court set aside this pleading because many players do have contracts signed with the club and therefore it is not completely uninvolved. It is the club that is subject to the federative rights and to the obligations attached to participation in the competition, which does not mean it cannot bring action against the company with which it has reached an agreement over a breach of the terms of that agreement.

Secondly, the appellant, while acknowledging the existence of the debt, pleaded that the players are amateurs, not professionals. In relation to this issue, the Supreme Court held that it need look no further than the submitted contracts to determine that the players owed the debt by the appellant club have professional relationships. Besides which, they receive sums in tune with the pay of professional athletes not straightforward reimbursements of their costs to play their sport. Lastly, the court based its decision to set aside the appeal on the fact that, although the players signed licenses for amateur players, there are later claims by them due to having signed professional employment contracts that were never notified to the Spanish football association (RFEF - *Real Federación Española de Fútbol*), because if they had been they would have had to apply for professional licenses.

6 Madrid High Court concludes on the incompatibility of holding an official match on the same day as the assembly for electing the RFEF chairperson is held

Madrid high court judgment of March 29, 2019

Madrid High Court set aside an appeal lodged by one of the candidates for RFEF chairperson against a decision by the Spanish Disciplinary Committee for Sports (TAD) in which, despite having had it pleadings partly upheld, the appellant argued that the decision made him worse off than before, by not ruling on what had been requested, which was to change the date of a football match that was to be held on the same date as the assembly to elect the RFEF chairperson and to cancel the date of that assembly.

Madrid High Court clarified that what the appellant was seeking was for the match and the assembly not to take place on the same date, and this had been decided in the judgement in the only possible way to settle the issue (by ordering a new date for the assembly). In actual fact, the appellant was seeking something else (because he was wanted the football match to be cancelled, not the decision that was adopted) which depends on LaLiga not on the RFEF.

Moreover, the court did not accept that TAD's decision made the appellant worse off, because it had not been explained anywhere in the pleadings how the decision to postpone the date of the assembly could harm or change the candidates right to vote. In addition to the decision not harming his right, he won the vote for chairperson.

7 An animal rights activist is ordered to pay damages to the family of a deceased bullfighter for gloating over his death on a Facebook post

Supreme court judgment of April 3, 2019

The Supreme Court set aside a cassation appeal lodged by the head of a government department, an animal rights activist, who complained of interference with his freedom of expression after he was ordered to pay €7,000 in damages to the family of a bullfighter after posting a message on Facebook a few hours after his death, calling him a murderer and seeing positive elements in his death.

The court saw the issue as a clear conflict between the right to reputation and the right to freedom of expression. It argued that, although the second right prevails over other personality rights, such as the right to reputation, this does not mean that in every conflict between the two fundamental rights the court must rule in favor of freedom of expression over the right to reputation, because depending on the circumstances of each case, weighing up both rights might result in the right to reputation prevailing over the right to freedom of expression.

Lastly, the Supreme Court determined that the statements at issue fall outside the matters protected by freedom of expression, due to their clearly harmful content and, especially, the context in which the message took place, a few hours after the death of the harmed person.

8 IAAF regulations with restrictions for hyperandrogenic athletes (Semenya case) are valid

Arbitral award delivered by the Court of Arbitration for Sport on April 30, 2019

The Court of Arbitration took the side of the International Association of Athletics Federations (IAAF) and set aside the appeal filed by Caster Semenya, Olympic champion and three times winner of the 800 meters title, and Athletics South Africa in which they jointly requested a declaration of invalidity of the rules restricting the participation of hyperandrogenic athletes, who have higher levels of testosterone.

In 2018, the IAAF replaced the eligibility rules for hyperandrogenic athletes by adding stricter requirements for women athletes with differences of sexual development (DSD) who want to take part in events from 400 meters up to a mile, which are precisely the appellant's preferred events. From that date, it was stipulated that to be eligible for those events, athletes with DSD had to bring down their natural testosterone levels to below 5 nanomoles per liter of blood and stays at those levels for at least 6 months.

In its interpretation of those rules, CAS found that they were discriminatory and expressed major concerns over their practical application, but that the rules were necessary, reasonable and proportionate to achieve the objectives set by the IAAF to protect the integrity of female athletics in events of this type.

9 The National Appellate Court analyses the simulation in licensing agreement for rights of publicity of professional football player

National appellate court judgment of May 13, 2019

The National Appellate Court set aside an appeal filed by a football player against a TEAC decision, partly upholding the claim concerning the assessment relating to his personal income tax returns for the years between 2008 and 2010, thereby confirming the audit work principally on the following elements:

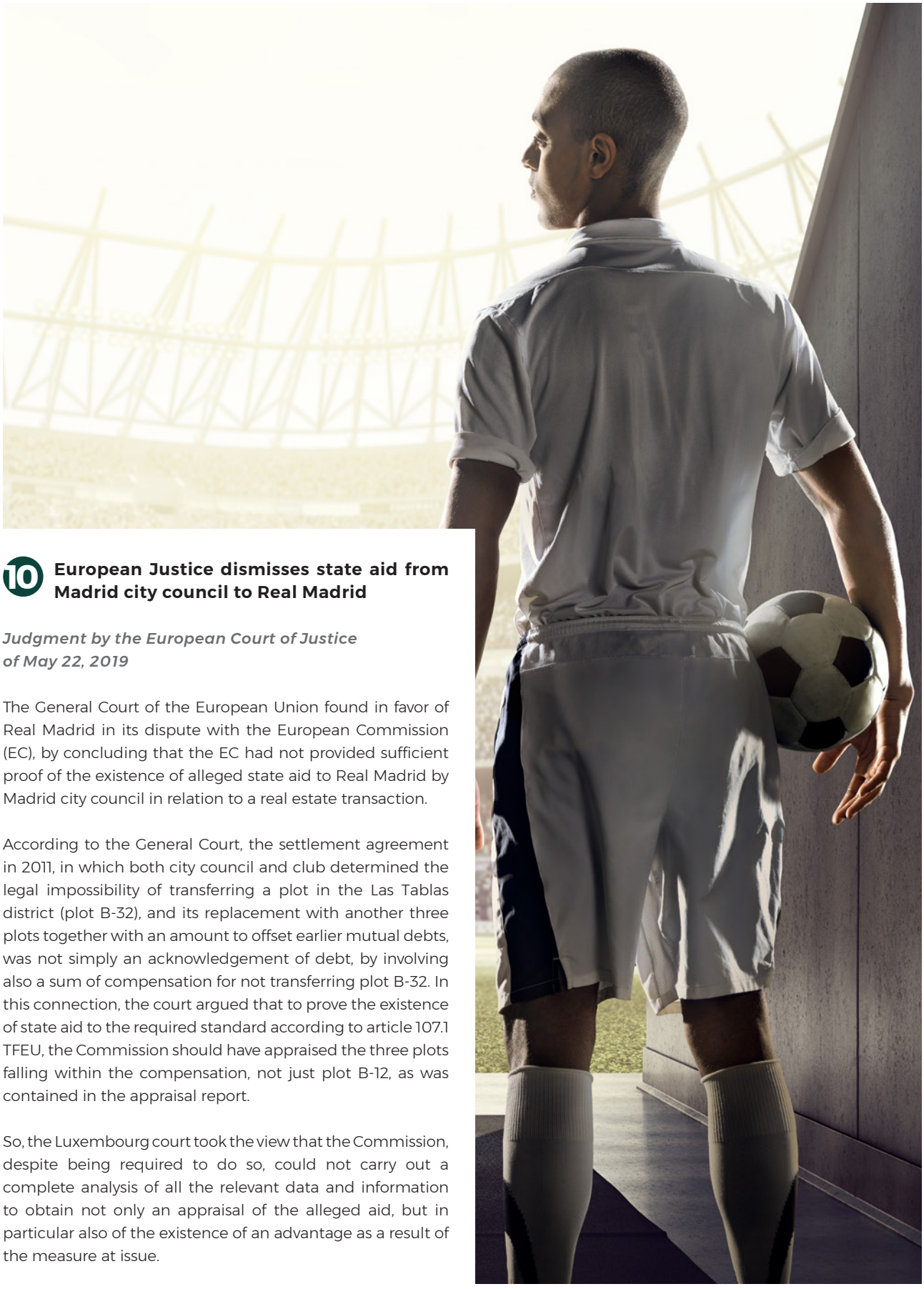
- It confirmed the existence of a simulated contract (absolute simulation) in the licensing of rights of publicity to a company in which the player is a majority shareholder and director. As a result, the income obtained was characterized as income from movable capital.

- It confirmed the appellant's treatment as salary income of the unreported income from the UK, paid by his previous UK club (after applying the €60,100 exemption under 7.p) of the Personal Income Tax Law).

- In relation to the international double taxation credit for income obtained in South Africa in the Confederations Cup 2009 championship, the National Appellate Court confirmed the calculation performed by the auditors, in that the limit challenged by the appellant does not fall outside the determinations in the tax treaty with the UK.

- In relation to the fees paid by the current Spanish club to the player's agent (a legal entity), the National Appellate Court found that the contract between the club and the agent was simulated, and treated the fees as payments to the player himself as salary income resulting from the provision of agency services (including the VAT paid for the alleged services). The National Appellate Court held that the agent's fees were paid by the club on behalf of the player, delivered under a contract between the club and the agent that was "absolutely simulated because the cause of the contract did not exist".

- Lastly, it determined that the penalty agreement was lawful, after concluding that the factual and intentional elements for the penalty had been evidenced.



10 European Justice dismisses state aid from Madrid city council to Real Madrid

Judgment by the European Court of Justice of May 22, 2019

The General Court of the European Union found in favor of Real Madrid in its dispute with the European Commission (EC), by concluding that the EC had not provided sufficient proof of the existence of alleged state aid to Real Madrid by Madrid city council in relation to a real estate transaction.

According to the General Court, the settlement agreement in 2011, in which both city council and club determined the legal impossibility of transferring a plot in the Las Tablas district (plot B-32), and its replacement with another three plots together with an amount to offset earlier mutual debts, was not simply an acknowledgement of debt, by involving also a sum of compensation for not transferring plot B-32. In this connection, the court argued that to prove the existence of state aid to the required standard according to article 107.1 TFEU, the Commission should have appraised the three plots falling within the compensation, not just plot B-12, as was contained in the appraisal report.

So, the Luxembourg court took the view that the Commission, despite being required to do so, could not carry out a complete analysis of all the relevant data and information to obtain not only an appraisal of the alleged aid, but in particular also of the existence of an advantage as a result of the measure at issue.

Resolution requests

1 Second and third division competitions are subject to 10% VAT if they are official competitions

DGT resolution V0359-19 of February 20, 2019

It was asked whether second division B and third division football competitions are classed as amateur sports events and what VAT percentage is chargeable on them.

The DGT's view is that amateur sports events must be classed according to the sectoral legislation. As for the VAT percentage, second division B and third division competitions are taxable at 10 percent if they may be classed as official competitions that are not professional. Otherwise, they are taxable at 21%.

2 Exemption for the income of publicly employed dancers for performances outside Spain

DGT resolution V0396-19 of February 25, 2019

It was asked whether the income received by dancers employed by the requesting autonomous community authority, who travel abroad and perform their work outside Spain for those days, may be exempt under article 7 p) of the Personal Income Tax Law. If so, whether the employer is required to make withholdings.

According to the OECD's Model Tax Convention and the Spanish VAT Law it was concluded that insofar as they are artists, their income is taxable in the state where the event is held and is therefore exempt in Spain, and there is no withholding obligation for the employer.

3 Taxation of the awards obtained in amateur competitions

DGT resolution V0431-19 of February 28, 2019

It was asked how the prizes awarded in a tennis championship organized by amateurs should be taxed for personal income tax purposes.

From the provisions in the Personal Income Tax Law, the DGT concluded that, for the organizer, the prizes must be treated as income from professional activities and, in exceptional cases, salary income, and they are subject to withholdings in the two cases. For the recipient, they may only be treated as income from economic activities where sport amounts to an economic activity for the recipient. Otherwise, they are taxed as capital gains.

4 Not-for-profit entities engaged in promoting sport are required to register for the tax on economic activities for all the activities they actually carry on

DGT resolution V0450-19 of March 1, 2019

The request concerned the tax on economic activities classifications that a private not-for-profit entity should register for if it carries on different types of activities to promote the performance of one or more types of sports, and participation in federated sports activities and competitions.

Rule 2 of the Instruction for implementing the tax on economic activities classifications provides that the simple fact of carrying on an economic activity specified in the Classifications will give rise to the obligation to make the relevant taxpayer registration notification and to be liable for this tax. Accordingly, the requesting Association is required to appear registered and, if applicable, be liable for the tax on every one of the activities it actually carries on and the classification of those activities will depend on their actual characteristics. An activity is not treated as an economic activity if it is funded through public subsidies, members' fees or enrollment fees, according to article 79 of the Revised Local Finances Law.

5 Football club's training fee payments are subject to VAT

DGT resolution V0482-19 of March 6

It was asked whether the amount in respect of training fees paid by a Spanish club to another Spanish club as a result of a transfer of a football player to a UK club (solidarity mechanism approved by FIFA's Regulation on the status and transfer of Players), and agreed between the former and the new club is subject to VAT.

Amounts paid in respect of training fees must be treated as a payment in respect of the costs of training players and not as an indemnification payment for VAT purposes, because they are not paid to redress damage or losses caused to the training club, but to cover the costs that club incurred and which are going to benefit the new club; in this case, the club the trained player is going to play for. Therefore, the amount paid to the club that trained the player to cover training and instruction fees is the price of a transaction subject to VAT.

That said, it is considered that the supply takes place in Spanish VAT territory, and taxable at the standard 21% rate, where the customer, the new club to which the player is transferred (regardless of who actually pays the fees) is established in Spain. Since the new club is a UK club, the transaction concerned is not considered to take place in Spanish VAT territory and, therefore, is not subject to VAT.

6 Tax on economic activities and personal income tax on income obtained from publication of a book by its own author on a downloading website

DGT resolution V0503-19 of March 8, 2019

The request concerned the tax on economic activities and the personal income tax falling due for an individual that has published a book electronically and on paper through a downloading website.

In relation to the tax on economic activities, the DGT took the view that writing and publishing books is an activity subject to the tax, due to being specified in caption 861 and caption 476.1.

On the subject of personal income tax, self-publication of a book by its author (either electronically or on paper, or both) means that any income obtained from selling the book is treated as income from economic activities. For the received income to be characterized as salary income the book would need to be published by a third party who had been licensed the exploitation rights for the work, unless the author had written the book as part of an economic (professional) activity, in which case the remuneration for the licensed rights would be treated as income from professional activities.

7 The income obtained by a nonresident orchestra conductor are characterized as artists' income for the purposes of the Letonia-Spain tax treaty

DGT resolution V0572-19 of March 18, 2019

The request concerned whether the income received for services performed in Spain by a musician and orchestra conductor resident in Letonia and hired under a contract for services by a Spanish foundation are characterized as artists' income or as income from independent professional services and whether the generated income is subject to withholdings in Spain.

Based on article 17 of the Letonia-Spain tax treaty and paragraphs 3 and 4 of the commentaries on article 17 of the OECD's Model Tax Convention, the DGT allowed artist status for conductor musicians and explained that the income obtained from that activity may be taxed in the other contracting state if in the provision of services by the musician in the other contracting state the scenic element is predominant.

In this case, because the conductor musician is hired as principal artist and his image and name are used on posters to promote the concert, the scenic element of the activity to be performed in Spain is predominant and as a result the income obtained is taxable in Spain. They are also subject to withholdings.

8 The performance of motorcycle acrobatic shows is subject to 21% VAT

DGT resolution V0623-19 of March 22, 2019

The request concerned the VAT percentage chargeable on the services provided by an individual, registered in caption 043 "Motorcycle and automobile drivers, trainers and instructors" for the tax on economic activities, consisting of performing motorcycle acrobatic shows.

Referring to article 90 of VAT Law 37/1992, the DGT determined that the applicable standard rate is 21%, except for the transactions under article 91 of the VAT Law, which are chargeable at 10%, and include amateur sports shows and other live cultural shows. The DGT specified, however, that the reduced VAT rate is only applicable to access services to the shows but not to independent services other than access.

9 Existence of travel and subsistence expenses in a special employment relationship between an unskilled member of a bullfighting team and the bullfighter in chief

DGT resolution V0729-19 of April 2, 2019

It was asked whether article 9.B.1 of the Personal Income Tax Regulations applies to an unskilled member of a bullfighting team who received his income from the bullfighter in chief. That article governs allowances for travel and normal accommodation and subsistence expenses.

The DGT explained that, if the starting point is to treat that employment relationship as a special relationship according to the Supreme Court's case law, it may be said that the provisions in article 9. B.1 come into play, Regard must be had, however, to the provisions in article 14.3 of the collective labor agreement for bullfight workers, which require the bullfighter in chief to make available to all team members,

adequate means of travel, accommodation and subsistence to attend the event. Therefore, application of article 9 will depend on whether the bullfighter in chief had paid those travel, accommodation and subsistence expenses.

10 Charging VAT on the services supplied for no price by a foundation for the promotion of basketball

DGT resolution V0754-19 of April 3, 2019

It was asked whether VAT is chargeable on services supplied for no price by a foundation set up to promote and further basketball, which additionally supplies services for a price which are also directly related to the performance of sport. It was also asked whether the exemption in article 20.1.13 of the VAT Law, and the tax credit VAT scheme were applicable to the foundation.

Basing its comments on EU law, the DGT explained that where supplies of services made free of charge are carried out to achieve the foundation's own purposes, it may be inferred that VAT is not chargeable on them. In the case submitted in the request, because the services are directed at promoting the entity, it may not be concluded that they meet private needs. Moreover, for transactions subject to VAT, the exemption under article 20.1.13 of the VAT Law is only applicable if they qualify as supplies of services and are directly related to the performance of sport or physical education by an individual.

As for the deduction of input VAT by the foundation, insofar as it carries out transactions subject and not subject to VAT, it cannot deduct any VAT relating entirely to purchases of goods and services to be used exclusively for the performance of non-taxable transactions, whereas it can deduct input VAT on purchases of goods and services used exclusively for the performance of taxable transactions. In relation to purchases for the performance of taxable and non-taxable transactions, a reasonable and uniform allocation method must be used and continue to be used over time.

11 VAT is not chargeable on transfers of funds from a sports federation to a company that have no associated consideration

DGT resolution V0795-19 of April 15, 2019

It was asked whether a transfer of funds received as a gift for the organization of a sports championship by a federation to a public company, responsible for executing the tasks needed for the championship to be held, is subject to VAT.

Basing its findings on the VAT Law, and settled case law of the CJEU, the DGT reaffirmed the view that VAT is a tax on transactions in which, where there is a framework of reciprocal obligations, an advantage is afforded to the customer determining a consumer event. In this case, insofar as the transfer of funds for the received gifts to that public company does not involve any consideration, that VAT cannot be considered chargeable on that transfer.

12 VAT treatment of the supply of sports-related advisory and training services remotely

DGT resolution V0938-19 of April 29, 2019

In an interpretation of the VAT Law Directive 2006/112/EC, face-to-face and online training courses, which are not regarded as electronically supplied services, are exempt from VAT where the subjects are included in a curriculum that is part of the education system and has been approved by the ministry of education.

The fact that these activities have been supplied electronically, even though they amount to a teaching service, makes it impossible to claim the exemption, and they are subject to and not exempt from VAT (at the standard 21% rate).

The supply and downloading of files, recorded or automated courses, programs and training contents generally on the internet, or the access to information and programs on a training platform amount to an electronically supplied service, even if the user or customer has the option of receiving

tutoring or support from teachers on the platform, provided that teacher participation is ancillary to the supply of or access to the contents and programs. By contrast, educational services supplied by teachers qualify as a teaching service if they are supplied on the internet or on a similar electronic network used as a means of communication between teacher and user, even if the teacher uses digital content to supply the teaching services, provided that the services are ancillary to the online communication between teachers and pupils.

13 The income received by an individual for their participation in a conference for the dissemination of sports information is subject to withholdings if it is characterized as income from economic activities

DGT resolution V0976-19 of May 7, 2019

The DGT took the view that income received by an individual as a result of participating in a conference on the dissemination of sports information are characterized as income from giving courses, lectures, colloquiums, seminars and similar events, and are generally taxable as salary income, unless they involve the organization for the individual's own account of means of production or human resources, in which case they must be characterized as income from economic activities, and therefore in this latter case they must be characterized as sums received by the taxpayer subject to personal income tax withholdings.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