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Félix Plaza
Partner in charge of the Sports & Entertainment Department
felix.plaza.romero@garrigues.com
T +34 91 514 52 00

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The fact of there having been a prior claim filed with the FIFA Dispute Resolution Chamber implies no tolling of the statute of limitations period for a claim against the player's dismissal

Judgment of the Madrid High Court of Justice of December 1, 2022

Ángel Olmedo Jiménez

The conclusion reached by the Madrid High Court of Justice of Madrid is that the legal action brought by a professional player against his dismissal has become statute-barred. Its understanding is that the action the player had previously brought before the FIFA Dispute Resolution Chamber does not toll the statute of limitations period for a claim against dismissal.

Issue in question and facts of interest

The player and the Club signed a contract with a term of 4 seasons.

During such term, the player was loaned to two teams. When the loan to the second of such teams came to an end, the Club asked him to take a salary cut and he refused.

At the start of the 2021/2022 season, the team asked the player, on several occasions, to return to training at the Club.

For his part, the player notified the Club of the termination of his contract due to alleged breaches of its terms, and on August 30, 2021, he filed a lawsuit before the FIFA Dispute Resolution Chamber in which he requested that his relationship with the Club be declared terminated, and that the team be ordered to pay him his outstanding remuneration plus 5% interest, as well as an amount by way of compensation for an unjustified breach of contract.

Subsequently, during the month of September, the team notified the player of the commencement of disciplinary proceedings due to his absences from work, and such proceedings ended in the month of October with the communication of his dismissal.

On November 25, 2021, the FIFA Dispute Resolution Chamber issued a decision declaring the plaintiff's claim inadmissible, without the player appealing

against such decision to the CAS. Subsequently, on January 4, 2022, at the request of the player's legal counsel, the FIFA body communicated the grounds for its decision.

On January 21, 2022, the player filed a petition for conciliation in relation to the disciplinary dismissal that had been communicated to him.

The Labor Law Court dismissed the claim on the grounds that the dismissal action had become time-barred, arguing that the claim filed by the worker before the FIFA Dispute Resolution Chamber did not have a tolling effect on the statute of limitations period.

Judicial interpretation

In this judgment, the Court is essentially called upon to confirm whether the claim that the player filed before the FIFA Dispute Resolution Chamber has the effect of suspending the period of 20 business days that he had in which to present a claim against the disciplinary dismissal that the Club had notified to him as a result of his absences from work.

The judgment of the Madrid High Court of Justice analyses three main issues in this respect:

(i) The *dies a quo* from which the aforementioned 20-day period should be counted: The Court's understanding is that such date can only be October 20, 2021, i.e. the date on which the player was notified of his dismissal.

This is not altered by the fact that, prior to this, the player had initiated a claim procedure before the FIFA Dispute Resolution Chamber, since, as the Court reasons: "*the date on which he filed it, which was before he was even notified of the initiation of disciplinary proceedings – the date of such notification being the following September 10 –, demonstrates the lack of connection between the two decisions*".

Furthermore, according to the Decision, it was clear from the way in which the Club acted that it did not agree to the dismissal dispute being aired before the sporting body, so it cannot be said to have assumed an "*arbitration commitment*".

(ii) In addition, the judgment analyzes both Royal Decree 1006/1985 and the Collective Bargaining Agreement, concluding that:

a. The jurisdiction competent to hear disputes regarding disciplinary matters between players and clubs is the labor law jurisdiction.

b. The Collective Agreement establishes no specific time limits for challenging a dismissal and contains no provisions relating to the possible tolling of the statute of limitations period for claims against dismissal as a result of other steps taken (such as the filing of a claim before the FIFA).

What such Agreement does stipulate is that if the disciplinary penalty is not appealed against, it will become final.

The date on which he filed it, which was before he was even notified of the initiation of disciplinary proceedings

(iii) Finally, and with regard to the arguments put forward by the player in his appeal, the Court points out in its ruling that:

a. The fact that the player did not continue with the proceedings through the sports jurisdiction, appealing to the CAS against the decision of the FIFA Dispute Resolution Chamber, was inconsistent with his own previous actions.

b. It cannot be argued that the *dies a quo* was when the Chamber gave its reasons for the dismissal of his claim, rather than the earlier date on which notice of such dismissal was served, particularly given that, as mentioned above, the player failed to appeal against it before the CAS.

c. The argument based on which the Chamber rejects the player's claim is that he had accepted the jurisdiction of the Spanish labor law courts and that "there are risks involved in accepting other types of channels which are not the usual ones", affirming that the step he had taken had not served to toll the statute of limitations period.

NEWS AND EVENTS

Félix Plaza, Co-Director of Garrigues Sports & Entertainment, participates in a CEOE Sports Subcommittee working session

On February 7, 2023, Félix Plaza, Co-Director of Garrigues Sports & Entertainment, took part in a working session organized by the CEOE's Sports Subcommittee to reflect upon the model needed to boost the Spanish sports economy.

The session focused on sport as a pillar for economic and social development and the need for public-private partnership, the conclusion drawn from the review of the current situation being that there is a need for change in the sector.

During his speech, Félix Plaza had the opportunity to present his reflections on the business taxation of sport within the framework of the analysis of the different models of business economics, analyzing its usefulness as a tool at the service of these models.

Félix Plaza re-elected CAS/ TAS referee for a new term after the last meeting of the Consejo Arbitral del Deporte (ICAS)

Félix Plaza, co-managing director of Garrigues Sports & Entertainment, has been re-elected by the Arbitration Council for Sport as arbitrator of the Court of Arbitration for Sport - Court of Arbitration for Sport at the last meeting held in Laussane. Félix Plaza will be a member of the body of arbitrators from 2021.

Resolutions

The charging of entrance fees to access a municipal swimming pool is subject to and not exempt from VAT if the managing company is not classed as a private sport-related social enterprise

DGT resolution V1955-22 of September 14, 2022

The requesting entity is a trading company which has been awarded a concession for the management of a public service consisting of the operation of a municipal swimming pool. Its question is whether the charging of entrance fees to the swimming pool is subject to and, where applicable, exempt from VAT.

The DGT indicated that pursuant to articles 4 and 5 of the Value Added Tax Law (VAT Law), the requesting party is classed as a trader or professional. Therefore, although the concession is not subject to VAT (article 7.9 of the VAT Law), the charging of entrance fees is subject to VAT since this is a service provided at a later point in time. Similarly, regarding exemption, as the requesting party is not classed as a private sport-related social enterprise, its sales service is not exempt.

Taxation for personal income tax purposes of amounts received by a disciplinary judge in respect of travel, accommodation and meal expenses

DGT resolution V2358-22 of November 15, 2022

The party requesting the ruling, a disciplinary judge in the Royal Spanish Equestrian Federation, receives, in addition to his/her fees for such activity, payments in respect of travel, accommodation and meal expenses. He/she asks how these items should be treated for personal income tax purposes.

The DGT responded that the requesting party cannot apply article 9 of the Personal Income Tax Regulations, which envisages an exemption for allowances in respect of travel, meal and accommodation expenses, since he/she is not in an employment relationship with the federation in which the hallmarks of dependency and working for another person are present. However, the DGT affirmed that the existence of an expense incurred on behalf of a third party can be recognized if: (i) the taxpayer is not entitled to apply the rules on per diems exempt from taxation, and (ii) the purpose of the expenses incurred by the organizing sports federation is to place at the taxpayer's disposal the means required to carry out his/her work (rather than being limited to the reimbursement of expenses).

Consequently, if the sports federation provides means of transport and accommodation for the judge to carry out his/her duties, no income is received by the requesting party as there is no profit. However, if the federation (i) reimburses the expenses and the requesting party cannot properly demonstrate that they constitute compensation, or (ii) pays an amount which may be freely used, this would constitute monetary income and be classed as earned income subject to personal income tax.

The DGT has analyzed the headings under which an activity consisting of the purchase and sale of racehorses should be registered

DGT resolution V2395-22 of November 17, 2022

The requesting party is a company that is going to be engaging in the purchase and sale of racehorses, which will be trained by a hired professional. It asks which headings the company needs to register under.

The DGT's resolution referred to the following activities:

(i) The acquisition, care and sale of horses: the company must be registered under group 061 of section one of the Classification headings, i.e. "Livestock facilities keeping horses, mules and asses".

(ii) Horse training: if the company trains its own horses with its own employees and without the aim of participating in the market, it is not obliged to register for the purposes of the Tax on Business Activities (IAE). If, however, the company trains horses owned by third parties or provides teaching services to third parties, it must be registered under heading 967.2 of section one of the Classification headings, i.e. "Sports training schools and services".

(iii) The participation of horses in professional races: the company will have to register in group 049 of section three of the Classification headings, i.e. "Other activities related to sport, n.e.c.". This activity is classed for IAE purposes as being artistic; for this reason, if it is carried out in premises or an establishment, its use will have no implications for the purposes of this tax. Therefore, a minimum municipal tax charge will be payable irrespective of where in Spain the races are held.

(iv) Running of an equine livestock facility: this is classed as an independent livestock activity and is therefore taxable at the minimum municipal rate required for the pursuit of such activity in the municipality in which the facility is located.

Social security charges paid by nonresident entertainers in their country of origin do not qualify for deduction from the withholding tax base for nonresident income tax purposes.

DGT resolution V2632-22 of December 27, 2022

The requesting party is an individual resident in Spain who contracts nonresident entertainers. The entertainers send the requesting party invoices which include amounts corresponding to the social security contributions they are required to pay in their countries of origin. The question asked is whether, for the purposes of calculating the withholding tax base, the taxpayer should include these social security charges.

The DGT based its response on the assumption that the income obtained is taxable in Spain, by virtue of the applicable double tax treaties, and is taxable under domestic legislation. It points out that insofar as the payer is obliged to withhold tax and make the corresponding prepayment because he/she falls within the scope of article 31.1 of the revised Nonresident Income Tax Law, the withholding tax base must include all the amounts paid. Therefore, even if the social security charges are itemized in the invoices

issued by the entertainers, the taxpayer cannot reduce the withholding tax base.

Exemption for VAT purposes of the supply of training services as a sports coach

DGT resolution V2600-22 of December 21, 2022

The requesting party is an individual who works for a sports federation in which he/she provides training services as a sports coach for technical teams, the query relating to the exemption of these services for VAT purposes.

The DGT pointed out that the exemption for teaching services regulated in article 20.One.9 of the VAT Law is not applicable to services related to the pursuit of sport, since such services are expressly excluded. Regarding the specific exemption for services relating to the pursuit of sport, regulated in article 20.One.13 of the VAT Law, it concludes that it is applicable when the services are provided by entities or establishments of a social nature to natural persons who engage in sport. Conversely, if a natural person acts as a self-employed professional, the provision of sports services is subject to and not exempt from VAT and taxable at a rate of 21%.

The treatment for VAT purposes of the organization of the preseason of various football teams

DGT resolution V0142-23 of February 6, 2023

The requesting party is a company that is going to engage in the design and organization of the preseason of various different football teams. It is going to invoice Spanish sports clubs for supplies of services all over the world – not only in Spain –, including intra-Community and extra-Community operations, and asks about the place of supply of such operations and whether they are subject to VAT.

According to the DGT, it must be determined whether the operations to be performed by the requesting party constitute a set of supplies of services, each of which is subject to VAT independently, or whether it is a single complex service provision consisting of the organization of events. The conclusion reached is that it is a single supply of services consisting of the organization of the preseason sporting event, since it includes everything necessary for the event to be held and constitutes, for the recipients, an end in itself.

The DGT therefore affirmed that if the recipient of the services is a football club which has its place of business or a fixed establishment in VAT territory, the supply will be subject to VAT. Otherwise, the service is not deemed to be supplied within VAT territory, in which case the requesting party should not charge VAT.

The taxation of the introduction of a private pleasure craft into Spain for the purposes of the Special Tax on Certain Means of Transport

DGT resolution V2661-22 of December 28, 2022

The requesting party is an individual resident in Canada and has been the owner, for more than five years, of a 19-meter long sail boat flagged in the British Virgin Islands and which has always remained there. As he/she acquired Spanish tax residency in 2022, he/she asked about the tax implications of bringing the craft into Spanish waters for the purposes of the Special Tax on Certain Means of Transport (IEDMT).

The DGT pointed out that, by virtue of article 65 of the Excise and Special Taxes Law, the entry of the craft into Spanish waters is subject to IEDMT and it is therefore required to be registered within 60 days of the date on which it enters this country. However, since insufficient data is provided, the DGT is unable to rule on the application of a possible exemption from this tax.

The DGT rules on the application of the tax credit for investments in live shows and its deferral when there is insufficient tax payable

DGT resolution V2675-22 of December 29, 2022

The requesting party is an entity that, in 2015 and 2016, incurred expenses relating to the production and staging of live performing arts and music shows which generated the tax credit envisaged in article 36.3 of the Corporate Income Tax Law. However, it was not until 2020 that it received from the National Institute of Performing Arts and Music the corresponding certificate in respect of the activities performed in 2015 and 2016. Therefore, the tax credits were claimed for the first time in the corporate income tax (CIT) self-assessment for 2019, although they were left pending application in future years because tax payable was not sufficient. The query relates to the possibility of rectifying the CIT self-assessments filed in 2017 and 2018 in order to apply the tax credits relating to these expenses.

The DGT pointed out that to apply the tax credit generated in the CIT self-assessments for 2017 and 2018, the taxpayer would have had to have obtained the certificate at the time of filing the corresponding returns, pursuant to article 36.3 of the CIT Law. It therefore indicated that the requesting party can only apply the tax credit in its 2019 CIT return, as this is the year in which entitlement to the tax credit was generated. Likewise, amounts not credited can be applied in self-assessments for tax periods concluding in the immediately ensuing fifteen years.

The exemption of the membership dues of nonprofit sports associations for VAT purposes is analyzed

DGT resolution V2403-22 of November 18, 2022

The requesting taxpayer is a nonprofit sports association that funds itself through periodic fees paid by its members. Its social purpose consists of promoting the playing of sports and pursuing social and cultural activities in order to contribute to the education and progress of the individual. The membership dues are used to fund the set of activities – sporting, social and cultural – pursued by the requesting taxpayer and it was asked whether they are exempt from VAT.

The DGT noted that, according to the provisions of articles 4 and 5 of the VAT Law, the requesting taxpayer is a trader or professional, and analyzed whether the membership dues were exempt from VAT in accordance with article 20.One.12 of the VAT Law. The DGT referred to the interpretation of said

article that the Supreme Court and the TEAC had adopted in order to conclude that the objectives of the requesting association were of a civic nature.

Therefore, the transactions that the requesting association performs to fulfill its social purpose, aimed at its members and with a payment identical to the fee set in the bylaws, will be exempt from VAT. If one of these requirements is not met, either because a price is billed which is independent of the fees set or because the supply of services is not made in the interest of the group but rather that of an individual, the amount received will be subject to VAT.

The DGT concludes that it is possible to combine the advance payment of a tax credit with the minimum tax

DGT resolution V0309-23 of February 16, 2023

The requesting taxpayer is a Spanish audiovisual producer, registered on the Administrative Register of Film Companies of the Film and Audiovisual Art Institute, which occasionally handles the execution of foreign feature film productions. The activity pursued by the requesting taxpayer gives entitlement to the tax credit contained in article 36.2 of the CIT Law and, moreover, given that its net revenue figure is above €20 million, it must apply the minimum tax regulated under article 30.bis of the CIT Law. It was asked whether, although it is included within the scope of the minimum tax, the advance payment of the tax credit can be obtained in accordance with the provisions of article 39.3 of the CIT Law.

The DGT held that, once the minimum net tax payable is determined, the requesting taxpayer can claim the pending amount of the tax credit contained in article 36.2 of the CIT Law and ask the tax authorities to pay the amount that could not be credited due to an insufficiency of tax payable.

Judgments and decisions

The CJEU confirms that the European Commission did not comply with the necessary requirements to declare certain State aid granted to a well-known football club as unlawful

Judgment by the Court of Justice of the European Union (CJEU) on November 10, 2022

The CJEU dismissed the appeal filed by the European Commission requesting the setting aside of the General Court's judgment which, in turn, set aside Commission Decision (EU) 2017/365 of July 4, 2016, which declared that certain State aid granted to a well-known football club was unlawful and incompatible with the internal market.

The issue in the appeal resolved by this judgment consisted of determining whether the trial judgment adopted a mistaken interpretation of the concept of economic advantage resulting from an incorrect interpretation of the Decision in dispute and of the Guarantee Notice. The CJEU confirmed the view taken by the General Court consisting of asserting that, in adopting the Guarantee Notice, the Commission had imposed on itself the obligation to verify the existence of a corresponding guarantee premium benchmark available on the financial markets and, failing that, the existence of a market price of a similar non-guaranteed loan, before resorting to the reference rate.

The CJEU confirmed that in no case did the General Court impose on the Commission an excessive duty of care and an excessive burden of proof, but rather had merely declared that it had not satisfied the requirements that the Commission had imposed on itself by adopting the Notice. Consequently, the CJEU dismissed the appeal on the grounds that it was unfounded.

The Supreme Court considers that bonuses granted to players for winning football matches do not constitute an offense of corruption in sport

Judgement by the Supreme Court of January 13, 2023

The Supreme Court partially upheld the cassation appeal filed by the legal representatives of a number of executives of a well-known football club against the judgment by the Navarra Provincial Appellate Court, which had convicted them, among others, of committing an offense of corruption in sport as defined in article 286.Bis.4 of the Criminal Code.

The defendants had paid bonuses to another team's players for winning a game and allowing themselves to lose another one for the benefit of the club they managed, with the aim of remaining in the First Division. The Supreme Court distinguished between the nature of bonuses for losing and bonuses for winning. As for bonuses for losing, it noted that they undoubtedly constitute an offense of corruption in sport. However, regarding bonuses for winning, it held that they do not invite any reproachable conduct, nor do they infringe the legal asset protected – fair play – since the payment is for winning, which is what must govern sports conduct and be every athlete's obligation.

The Supreme Court therefore upheld this ground of the cassation appeal on the understanding that bonuses granted for winning cannot be classed as a criminal offense (regardless of the appropriateness of an administrative penalty) since the outcome of the match is not in the player's hands, and because such conduct cannot be considered unfair, but rather the complete opposite.

A well-known motorcycle racer is acquitted of a crime against the public treasury due to failure to evidence his tax residence in Spain

Judgement by the Barcelona Provincial Appellate Court of December 12, 2022

The Provincial Appellate Court acquitted a well-known motorcycle racer of the crimes against the public treasury for which he had been indicted.

The point at issue consisted of determining whether or not the defendant was tax resident in Spain in the tax years

subject to inspection. The Court held that it was not possible to show, beyond a reasonable doubt, that the defendant had been physically in Spain for more than 183 days of the year. As for the taxpayer's center of economic interests, the Court distinguished between first-tier activities (which involve making strategic decisions on significant matters) and second-tier activities (which play a mere supporting role). The Court held that the location of a property in Spain – although it is support for pursuing first-tier activities – was not enough to consider that the defendant's center of economic interests was situated in Spain.

For all the above reasons, the Court concluded that, by virtue of the in dubio pro reo principle, the defendant must be acquitted of the crimes charged against him due to the failure to evidence that he had his tax residence in Spain during the tax years subject to inspection.

The Madrid High Court confirms that a well-known youtuber used a personal company with no resources to avoid applying the progressive personal income tax rates, which are higher than the corporate income tax rates

Judgement by the Madrid High Court of November 22, 2022

The Madrid High Court dismissed the appeals for judicial review filed by a well-known youtuber against the Madrid TEAR's decision of January 30, 2020, which had dismissed the claims against the decisions on the assessment and the penalty relating to personal income tax for the year 2013.

The High Court noted that the appellant had attributed income deriving from a personal activity to a company in which he was the majority shareholder in order to avoid applying progressive personal income tax rates, which were higher than corporate income tax rates. In its analysis, it stressed that the only resource that the company had to pursue it activity was the majority shareholder and noted that all the income received by the company originated from the appellant's personal profession activity, which, moreover, was remunerated with a notably lower amount than the one billed by the company to third parties. The Court clarified that the services must be valued at market value according to the principles established in its judgment of October 26, 2022, in which the Court validated the tax inspector's valuation of the related-party transaction in the assessment they issued against the company in relation to corporate income tax for the year 2013.

As for the penalty, the Court confirmed its appropriateness on the grounds that the youtuber was at fault, and validated the amount established by the tax authorities.

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The TEAC holds that that the exemption provided for in article 7.m) of the Personal Income Tax Law does not apply to income received by high-level athletes that is linked to results or is not used for sports coaching and training

TEAC decision of October 24, 2022

The TEAC partially upheld an appeal filed by a basketball player against a decision by the Madrid TEAR that had dismissed the economic-administrative claims filed against a decision on an assessment and penalty relating to the appellant's personal income tax for the years 2011-2013.

One of the issues analyzed by the TEAC was whether the basketball player could apply the exemption provided for in article 7.m) of the Personal Income Tax Law to amounts originating from the Spanish Basketball Federation for participating in games and tournaments, for the results obtained and for participating in the Olympic Games as out-of-pocket expenses. The TEAC held that none of these items could qualify as aid for sports training and coaching, but rather their purpose was to reward a series of sports results. Therefore, they did not meet the basic requirement to be regarded as tax-exempt income for the purposes of the player's personal income tax.

This same view was also expressed by the TEAC in its decision of December 18, 2022.

The National Appellate Court considers that remuneration paid by a football club to players' agents is paid on behalf of the players and is not deductible for VAT purposes

Judgement by the National Appellate Court of February 22, 2023

The National Appellate Court dismissed the appeal for judicial review filed by a well-known football club against the TEAC's decision of December 15, 2020, relating to Value Added Tax.

The Court cited and reiterated its judgment of March 23, 2022 and confirmed the view taken by the inspectors and the TEAC on the grounds that the payments made by the club to the football players' agents must be regarded as made on the players' behalf, given that the agents provided their services to the players and not to the club. In this way, it validated the possibility of adjusting VAT on the basis of private regulations, namely, the Football Agent Regulations approved by FIFA. Consequently, given that the recipients of the service provided and billed by the agents are the players, they are the ones that must bear the VAT charge. Therefore, the VAT charged by the agents is not deductible input VAT for the club.

As for the penalty imposed, the Court confirmed it on the grounds that its conduct was voluntary given that it had the necessary material and human resources to have applied the regulations correctly.

The National Appellate Court confirms the revocation of the penalty against an athlete for having been imposed based on the high likelihood of consumption of prohibited substances

Judgement by the National Appellate Court of January 19, 2023

The National Appellate Court dismissed the appeal filed by the World Anti-Doping Agency against the judgment for the defendant handed down by the Central Judicial Review Court, thereby confirming the decision by the Spanish Disciplinary Committee for Sports which upheld

the special doping-related appeal filed by the penalized athlete.

The Court considered that that the decision issuing the penalty did not respect the presumption of innocence principle on the grounds that it only proved that there was a high likelihood of consumption of prohibited substances, based on the results of the biological passport. The Court recalled that the right to penalize cannot operate in the realm of probabilities; rather, it must operate in the realm of certainties. Therefore, the penalty decision cannot be based on a higher or lower degree of possibility or likelihood that an infringement has been committed. The Court also noted that that the penalty decision did not correctly establish the facts of the offense, given that it did not describe the prohibited substance consumed. The adverse result in the biological passport did not determine that the infringement had been committed, but rather the likelihood of consumption of a substance that must be determined.

Consequently, the Court dismissed the appeal and ordered the World Anti-Doping Agency to pay costs.

The Supreme Court rules that the deduction of VAT borne by a football club is a right and not a tax option

Judgement by the Supreme Court of February 23, 2023

The Supreme Court upheld the cassation appeal filed by a well-known football club against the National Appellate Court's judgment that had dismissed the appeal filed against the TEAC's assessment decision regarding the request to correct supplementary self-assessments and the request for a refund of incorrectly paid VAT for the years 2014 and 2015.

The Court resolved the cassational issue by concluding that the deduction of VAT is a right held by the taxpayer, and not a tax option on the terms set out in article 119.3 of the General Taxation Law (LGT). Consequently, taxpayers may request the correction and corresponding refund of incorrectly paid tax – following the procedure set out in articles 120.3 and 221.4 of the LGT – with respect to a supplementary VAT self-assessment in which higher amounts of input VAT have been included and which has been filed in order to come into line with the view taken by the tax authorities in a previous tax inspection and to avoid a penalty.

Given that the appealing football club found itself in that case, the Supreme Court proceeded to uphold the cassation appeal on the grounds that the view taken by the trial court ran counter to the interpretation resolved in this judgment.

The publication in a gossip magazine of a photograph of a sailor who worked on a boat chartered by a famous person infringes the right to one's own image

Judgement by the Balearic Islands Provincial Appellate Court of January 11, 2022

The Balearic Islands Provincial Appellate Court partially upheld the appeal filed against the judgment issued by Ibiza Court of First Instance no. 1, which had dismissed the claim filed by the worker of the boat on the grounds that there had been no illegitimate intrusion into the right to privacy and one's own image as a result of the publication and dissemination of an image of the worker next to a famous person.

Contrary to the trial court's view, the Provincial Appellate Court ruled that the plaintiff was a joint main figure in the published image and not an accessory one, since she shared the image plane with the famous person, and the Court noted that the magazine could have pixelated or cropped out her face given that it did not affect the point of interest of the news. The Court indicated that there was an infringement of the right to one's own image, but that this did not necessarily entail an infringement of the right to privacy. Following the case law of the Constitutional Court, the two rights have their own substance and content and, in this case, the Provincial Appellate Court considered that the right to privacy could not be deemed to have been infringed.

Although it upheld the respondent's claims regarding the infringement of the right to one's own image, the Balearic Islands Provincial Appellate Court concluded that the quantum of damages sought had to be reduced because there had been no infringement of the right to privacy.

In an unjustified dismissal case, a municipal council is found to be the successor of the sports service of the municipal gym upon termination of the contract for services

Judgement by the Madrid High Court of November 7, 2022

The Madrid High Court upheld the appeal filed by an entity against the Labor Court judgment that had declared that the dismissal of a municipal gym monitor was unjustified and had considered the entity liable, ordering it to reinstate the monitor and pay any back wages.

The Court stated that, following the end of the contract between the appealing entity, which had been awarded the contract to manage the sports service of the municipal gym where the monitor worked, and the municipal council, which then began to manage the service directly, the latter was the party responsible for respecting the worker's right to keep his job under its employ. Consequently, the municipal council, as the successor to the service, was required to take over the contracts of the workers assigned to the service.

Therefore, the Madrid High Court upheld the appeal filed by the appealing entity, partially revoked the contested judgment regarding the ruling on liability for the unjustified dismissal, and found the municipal council liable in its stead.

Legislation

New FIFA Football Agent Regulations

The new Football Agent Regulations approved by the FIFA Council took effect on January 9, 2023, following an extensive consultation process with all key international football stakeholders.

The new regulations guarantee minimum professional and ethical standards for agents. Thus, the regulations establish minimum service standards between football agents and their clients. Among other measures, it imposes a mandatory licensing system, prohibits multiple representation to avoid conflicts of interest, and introduces a cap on agent fees. The aim is to reinforce contractual stability, protect the integrity of the transfer system and achieve greater financial transparency.

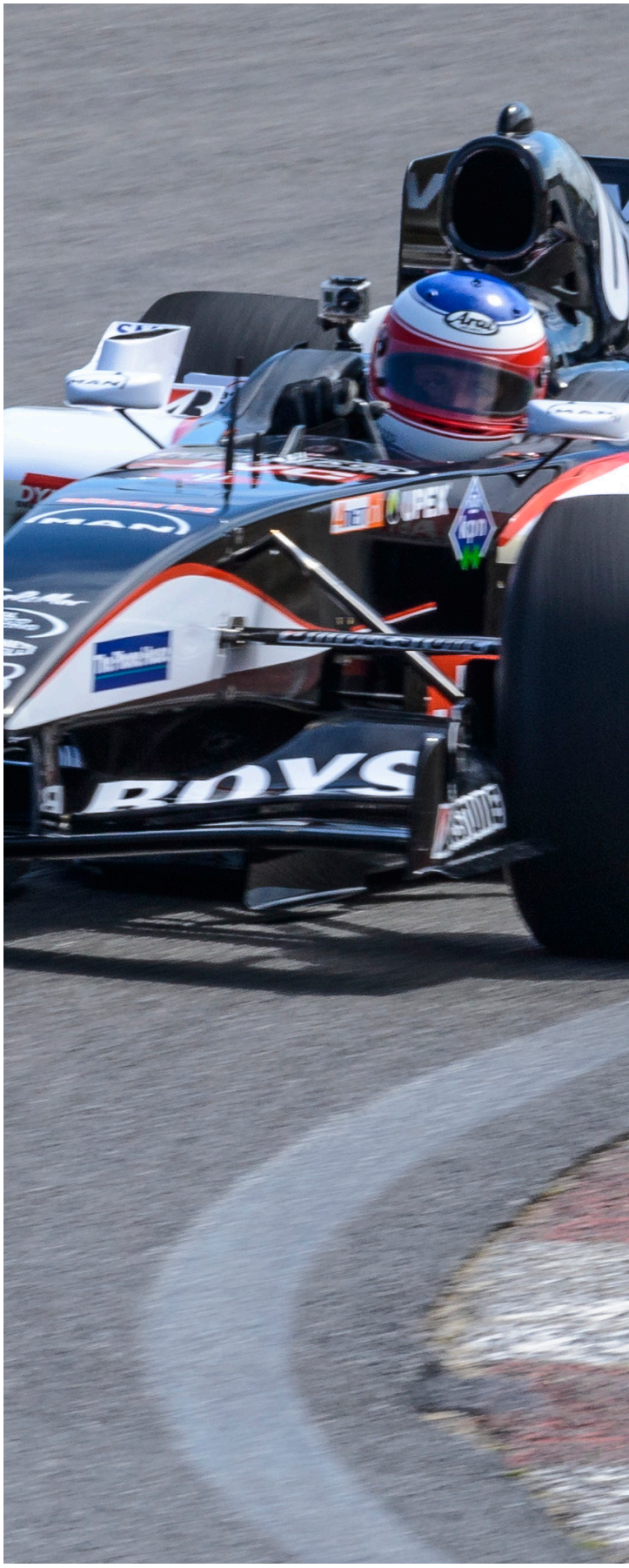
The State Tax Agency publishes guidelines to facilitate voluntary compliance with tax obligations linked to performances by non-Spanish-resident entertainers and sportspersons

On March 28, 2023, the Financial and Tax Inspection Department of the National Office of International Taxation of the Tax Agency published a clarification note that seeks to analyze the key aspects of the taxation of non-Spanish-resident entertainers and sportspersons.

To this end, the note provides taxpayers, advisers and event and show promoters with certain guidelines to facilitate voluntary compliance with tax obligations, with a view to reducing litigation in this field.

The National Sports Council will ask the Government and political parties for tax aid for sponsorshipss

After the Upper House of the Spanish Parliament rejected the proposed amendment to the General State Budget Law for 2023 from the Plural Parliamentary Group, which regulated new tax benefits linked to the promotion and sponsorship of sports-related programs, the National Sports Council will propose a National Sports Sponsorship and Patronage Pact to the Government and the main political parties in order to provide the sports regulatory framework with legal certainty and a more beneficial tax treatment.

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