GARRIGUES

NEWSLETTER
SPORTS & ENTERTAINMENT

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ELITE ATHLETES AND RIGHT TO SEVERANCE FOR TERMINATION OF A TEMPORARY CONTRACT. OPEN DEBATE

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After the Supreme Court determined a few standards for determining which professional athletes were entitled to severance payments following termination of their temporary contracts at the end of their term and the various high courts of justice have been interpreting the Supreme Court's solution in a variety of different ways, the Madrid high court has now made a new addition resulting in a debate which appears to be far from ending.

ELITE ATHLETES AND RIGHT TO SEVERANCE FOR TERMINATION OF A TEMPORARY CONTRACT. OPEN DEBATE

(Madrid high court judgment rendered on January 13, 2017)

ÁNGEL OLMEDO JIMÉNEZ

Issue under debate
The Madrid high court judgment weighed up whether the termination of the fixed-term contract of a player for Getafe, as a result of having reached the end of its term, conferred entitlement to the severance payment under article 49.1.c) of the Workers' Statute.

Facts of interest
The player had been playing for Getafe, under a contract signed in July 2010, with a term ending in June 2014, following a number of renewals.

While playing for Getafe, the player was transferred to Deportivo de la Coruña for the 2011/2012 season.

The footballer's gross annual salary was €725,000, plus the match fees he received for every game.

Throughout the time he played with the club, Getafe played in the First Division of Spanish football.

By reason of the termination of his contract, the player filed a claim with the labor courts, for a severance payment following termination of his temporary contract, which amounted to €95,324.46. That claim was dismissed and the player appealed against that judgment to a superior court in the labor jurisdiction (*recurso de suplicación*).

Judicial interpretation
At the legal heart of the appeal was determining whether the athlete was entitled to the claimed severance payment, and to do this, it was debated whether the interpretation made by the lower court which regarded the player an "elite athlete" and, therefore, under the Supreme Court's theory, not entitled to severance, is consistent with the law.

It must be noted here that almost all the decisions rendered by appeal courts since the Supreme Court's judgment had held that if the individual was regarded an "elite athlete" (according to their high pay level and the competitions in which they participate) they did not hold any right to receive severance in cases such as those at issue.

In this judgment however, Madrid High Court begged to differ, supporting its view on the following elements:

(i) Article 49.1.c) of the Workers' Statute provides for a severance payment which must not be held inapplicable for "highly qualified professionals".

(ii) The construal and use of the term "elite athlete", which the high court considered the Supreme Court had made *obiter dicta* in its judgment, cannot be determined by reference to the worker's compensation or to the worker's power to renew his contract or sign with another entity..

(iii) The high court considered that, in the *obiter dicta* reasoning made by the Supreme Court, when it excluded "*elite athletes*" from the right to receive the severance under article 49.1.c) of the Workers' Statute, it only intended to do so in relation to athletes who (i) regardless of having high-level athlete and high performance status (ii) receive "high revenues" as opposed to those who carry on their sporting activities for a more modest price.

Submerged in this distinction, the high court held that the Supreme Court did not discriminate based on participation in a specific league, side or division, or on the results obtained, but simply, on the fact of being paid considerable sums, and that the athlete "*does not place his interests in stability or quality in employment harmonized with freedom of contract but only in the latter (extending the contract or signing with another entity), because the former is amply satisfied with his very high compensation*".

(iv) After establishing this, the high court held that there is absolutely no legal ground for being able, based on subjective judicial reasoning (determining whether the player's salary is having an effect on his job stability and quality in his work), to exclude an athlete from the right to severance acknowledged legally in article 49.1.c) of the Workers' Statute, because finding otherwise could attack the constitutional principle of equality.

Accordingly, for all the foregoing reasons, the high court granted the player the right to severance for termination of his definite-term employment contact and ordered Getafe to pay a sum of €95,324.46, plus the late-payment interest due on payments ordered in legal proceedings.

It will be interesting to see the impact this judgment, which follows the reasoning for the dissenting vote to the Basque Country High Court Judgment on May 26, 2015, may have in a debate which, as you can see, is a long way from being settled.

The high court ordered payment for a player who breached a signed deferred contract and the club later hiring him, after concluding that, though the player had not become subject to the discipline of the team signing the deferred contract, or played for that team, the right to indemnity for breach of that contract did arise.

IF A FOOTBALL PLAYER BREACHES DEFERRED CONTRACT BOTH PLAYER AND CLUB SIGNING HIM ARE LIABLE FOR INDEMNITY FOR BREACH OF CONTRACT

(Cantabria high court judgment rendered on March 30, 2017)

ÁNGEL OLMEDO JIMÉNEZ

Issue under debate
The high court judgment examined whether the breach of a contract with the described characteristics meant that the player had to be found liable for that breach, and whether, additionally, there is secondary liability for the entity that later hired him. The judgment discussed the labor nature of the signed document and the consequences of breaching it.

Facts of interest
The player played for Real Racing Club de Santander, and, after reaching an agreement with Real Valladolid, signed a deferred contract in which, in addition to his pay terms, made provision for an early termination clause and indemnity for breach of the contract by either party, amounting to a million euros.

That document was signed on September 2, 2014. The start of the services was deferred until July 1, 2015 and they were to be provided for a total of four seasons. At the same time, a second agreement was signed in which Real Valladolid undertook to pay the player €51,000 euros, in respect of a transfer fee, on January 2, 2015.

The player later signed an employment contract with Deportivo de la Coruña, for four and a half seasons.

Real Valladolid sued both the player and Deportivo, and obtained a favorable judgment at first instance, ordering the player to pay a million euros for breach of the deferred contract and making the Galician club secondary liable.

The judgment considered that his hiring had to be considered perfected, despite his not having played for Real Valladolid, and that there was no defect in consent in the signing by the athlete.

Judicial interpretation
Unhappy with the judgment, the player and Deportivo de la Coruña appealed against the decision to a superior court in the labor jurisdiction.

The appellants pleaded in essence that: (i) because the provision of services had not actually taken place there was no contract, but rather simply a pre-contract, and therefore, the labor legislation on indemnity cannot be applied; and (ii) there was unlawful consideration, because when the agreement was signed with Real Valladolid, the player belonged to Racing de Santander, who was unaware of that fact.

The high court validated the lower court's judgment, basing its reasoning on the following points:

a) The document signed by the player with Real Valladolid is a genuine employment contract, even though the actual provision of services was deferred in time.

The court explained that, although this may be a debatable issue, where a pre-contract meets the requirements laid down for a contract in Royal Decree 1006/1985, it is subject, in all of its elements, to labor and employment law, and specified that "*when the relationship established between a club or sport entity and a professional athlete is an employment relationship, the pre-contract is also, and therefore, the consequences of a potential breach are determined within the scope of the labor jurisdiction [by the labor courts]*".

b) The fact of covenanting the payment of a transfer fee after the signing and before provision of the services does not condition the validity or enforceability of the covenant.

The chamber held nevertheless that, in the case under examination, this debate was futile because the player's breach (on signing the contract with Deportivo) occurred before the transfer fee was paid.

c) No defect, error or any other ground for rendering the deferred contract invalid existed, because the player was considered fully aware of the rights and obligations that he was entering into on signing it.

For these purposes, the chamber held that although Real Valladolid was not authorized under football association rules to hire the player, this does not preclude the validity of the contract signed with him, despite any liability in the field of football association matters, which that conduct might involve.

It must be mentioned, lastly, that the potentially disproportionate nature of the amount of the indemnity clause for breach of the deferred contract was not debated in the lawsuit.

THE FOOTBALL INDUSTRY AND THE DIGITAL AGE

FÉLIX PLAZA

The digital age is having a lasting transformational effect on the characteristics of professions and the necessary training of professionals

Although the internet was created in the 1960s, it was not until the appearance of the World Wide Web (WWW) in the 90s that the internet came into general use among companies and individuals.

If asked to name the milestones believed to have had most impact on the evolution of society, for many of us the appearance of the internet would be sure to come to mind.

In the sphere of technology, the advent of the digital age has probably had the same impact as that of the appearance of the internet on society and communication.

The digital age and the associated spread of the use of new technologies, combined, with the capability for instant global communication which the internet has brought, is radically transforming the way in which information is consumed throughout the world, and that in itself is another extremely important milestone.

In the words of professor Jódar Marín[1], "*in the same way as power was the engine of Industrial Revolution, information is the axis on which this technological revolution is turning*".

And from the mass consumption of information the term "big data" has emerged, referring to the various techniques for processing large volumes of data, which cannot be processed with the commonly used tools for capturing, managing and processing data because they exceed their capabilities.

This term embraces the various techniques and media that have been created to process vast amounts of data to extract valuable information, able to assist with decision-making.

[1] Jódar Marín, Miguel Ángel, "La era digital: nuevos medios, nuevos usuarios y nuevos profesionales" (the digital era, new users and new professionals).- Journal: Electrónica Razón y Palabra.

> *In the field of sport, big data brings the opportunity to capture multiple types of data through sensors placed on players' clothing, on the ball or in the stadium, together with historical data on results or trending topics on the internet and social media.*

Therefore, big data can convert data into important information that will assist with decision-making and benefit companies in their businesses.

Many companies are already using big data to understand the profiles of their clients or their targets so as to adapt their services almost in a customized way, which has helped develop their businesses.

And what does all this have to do with the football industry?

In the field of sport, big data brings the opportunity to capture multiple types of data through sensors placed on players' clothing, on the ball or in the stadium, together with historical data on results or trending topics on the internet and social media. Those data are processed and studied using sophisticated algorithms and software programs to obtain statistics, predictions or useable data for both teams and fans, betting houses or the players themselves. The range of applications for the data is huge; for trainers, videogames or in fantasy sports, for instance.

The fact is big data adds to the business opportunities of both sport organizations and clubs, through the sale or study of the data, or the sporting performance of clubs and players, because specific training sessions, strategies and tactics may be designed based on previous results, for instance. Similarly, the data may be included in their business intelligence, to improve the relationships teams have with their fans.

The data published in the 2016 Economic Guide to LaLiga (*La Guía Económica de LaLiga de 2016*) showed that in most cases, television rights accounted for the largest share of clubs' revenues.

The digitalization of television, together with the appearance of new digital media (tablets, smartphones, content platforms, and the like) and globalized communications, have had a transformational effect on the way television is consumed which also means how matches are consumed.

Besides the medium (on television, on tablets, on smartphones, online, and so on), digitalization has also changed the recipient (the target is no longer local, what matters is the world at large), the way in which televised content is consumed (the viewer is no longer a passive witness and is now able to interact during rebroadcasted games using the newly developed tools), together with the capability for commercial exploitation

of the rebroadcasting of matches (in a separate and independent way according to the country or geographic area where they are rebroadcasted).

Returning to the words Jódar Marín, "*In this context where technology meets mass media, a new economic, production and social model is established which gives rise to the appearance of hitherto unknown industries, professional profiles and economic models*".

The 2017 Deloitte Global Human Capital Trends report, the fifth edition of this annual report, was published with the title "Rewriting the rules for the digital age" because, in the words of its introduction, there have been "seismic" changes in the world of business. This new era, often called the Fourth Industrial Revolution has fundamentally transformed business, the broader economy, and society.

Companies face what the report describes as a "*radically shifting context*" for their workforce, the workplace and the world of work.

And the world of football is no stranger to this transformation process. Just the opposite is true, in fact, since it is, and is called on to be even more so, a clear catalyst and exponent of this dramatic technological change that is upon us.

The question that springs to mind therefore is whether the industry's professionals, at all levels, are ready for these change, whether they are flexible or resilient enough, to take on board not just the new rules of play imposed by the digital age, but also those that have yet to come and are currently unknown.

As discussed in Deloitte's report, business productivity has not been able to keep pace with the progress of technology.

Due to its worldwide visibility and economic importance, Spanish football is looking at an unbeatable opportunity to lead the way in the exploitation of data analysis that will benefit LaLiga, clubs, fans and any company in the professional football and sport environment.

Some experts believe the reason why the link between production growth and technological development has broken down lies in the fact that our ability to adapt to new technology, though very quick, is proving to be slower than technological growth.

It seems clear therefore that a greater ability to adapt and a better understanding of the new technological context, of its possibilities, potential and new operating rules, will lead to greater production capability, and eventually, better results. Otherwise, companies will be worse off if they move slowly and take longer to adapt to the new technological context.

In this context, the decision by companies to provide their workforce with adaptive training to the new digital context does not appear to be an option but a necessity.

Adapting to the new scenario is not only a task for productive companies and their workforces. Education and training institutions also have to anticipate the needs of their students and need to acquire the best staff to teach those subjects, which are so new or complex that very few people have the right profile.

These are undoubtedly very exciting times. And according to the experts, we aint seen nothing yet… So we have no choice but to make sure we are all ready for the change to ensure that what Darwin said about the survival of those are best able to adapt to change is not valid in this new digital age.

NEWS

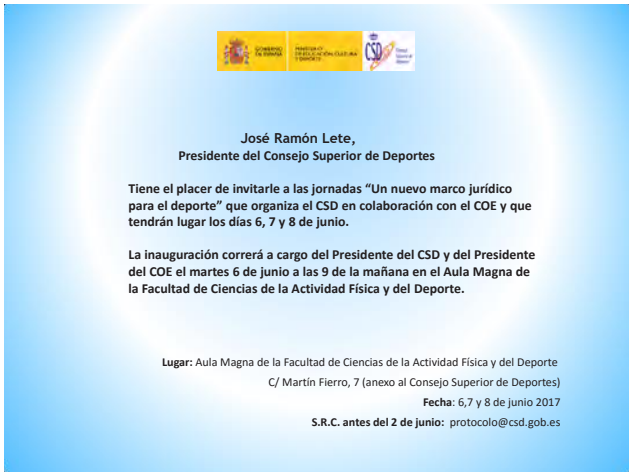
GARRIGUES SPORTS & ENTERTAINMENT CONTRIBUTES TO JOURNAL PALCO 23

In June, journal Palco 23 published an economic review of LaLiga (*La Guía Económica de LaLiga*), which featured an article by Félix Plaza, partner in the tax department and co-leader of Garrigues Sports & Entertainment. On the subject of the football industry and the digital age ("*La industria del fútbol y la era digital*"), which we are publishing in this newsletter, he looked at the transforming effect the digital age is having on the characteristics of professionals and on the necessary training of professionals.
Félix Plaza was present at the presentation of the journal, held at the headquarters of the Spanish professional football league.

GARRIGUES SPORTS & ENTERTAINMENT GIVES TAX LAW LECTURES ON SPORT BUSINESS ADMINISTRATION COURSE, ORGANIZED BY CENTRO DE ESTUDIOS GARRIGUES

The tax law lectures on the Sport Business Administration (SBA) course at Centro de Estudios Garrigues, in May and June, were given by Félix Plaza, partner in the tax department and co-leader of Garrigues Sports & Entertainment, along with other Garrigues professionals.

GARRIGUES SPORTS & ENTERTAINMENT PARTICIPATES IN CONVENTION ON NEW LEGAL FRAMEWORK FOR SPORT ("*NUEVO MARCO JURÍDICO PARA EL DEPORTE*") ORGANIZED BY NATIONAL SPORTS COUNCIL (CONSEJO SUPERIOR DE DEPORTES, CSD) IN CONJUNCTION WITH SPANISH OLYMPIC COMMITTEE


José Ramón Lete,
Presidente del Consejo Superior de Deportes

Tiene el placer de invitarle a las jornadas "Un nuevo marco jurídico para el deporte" que organiza el CSD en colaboración con el COE y que tendrán lugar los días 6, 7 y 8 de junio.

La inauguración correrá a cargo del Presidente del CSD y del Presidente del COE el martes 6 de junio a las 9 de la mañana en el Aula Magna de la Facultad de Ciencias de la Actividad Física y del Deporte.

Lugar: Aula Magna de la Facultad de Ciencias de la Actividad Física y del Deporte
C/ Martín Fierro, 7 (anexo al Consejo Superior de Deportes)
Fecha: 6,7 y 8 de junio 2017
S.R.C. antes del 2 de junio: protocolo@csd.gob.es

A convention on a new legal framework for sport, organized by the National Sports Council in conjunction with the Spanish Olympic Committee, was held at the Faculty of Physical Activity and Sport Sciences, on June 7, 8 and 9, to address and discuss a broad and diverse range of topics concerning sport and the regime for athletes.

Félix Plaza, partner in the tax department and co-leader of Garrigues Sports & Entertainment, participated in the convention, which broached topics including the role of the government in sport, the tax framework for sport, the federative model, the recasting of the sports disciplinary regime and the resources system, the structure of the legal regime for athletes and athletes' status, in addition to the political parties' position generally towards sport.

JUDGMENTS AND RULINGS

1 Constitutional court judgment rendered on February 2, 2017, concerning fundamental right to strike and employer's right to change employment terms (*ius variandi*)

The Constitutional Court rejected the appeal lodged by a labor union against a TV station for breaching the right to strike set out in article 28.2 of the Spanish Constitution, by broadcasting a football game during the strike.
The court held that no blacklegging had taken place because no employees had been brought in from outside to replace the workers, and the nonstriking workers had not engaged in any activities other than their usual functions.
Regarding the use of technical media other than that in regular use, the court concluded that the broadcasting company used the technical media it already had, but was not in regular use, and a different procedure was implemented. Also that requiring the employer not to use the technical media that the company has available is tantamount to imposing acts of collaboration with the strike which is not provided for in the law, and therefore the use of media already existing at the company is compatible with the right to strike, and by using those media the nonstriking workers had been able to exercise their freedom at work, a recognized right.

2 Judgment by Court of Justice of the European Union rendered on February 16, 2017, on communication of broadcasts by TV sets installed in hotel rooms

Handelsgericht Wien (Commercial Court, Vienna) submitted a request for a preliminary ruling to the Court of Justice of the European Union (CJEU), asking whether article 8(3) of Directive 2006/115 of 12 December 2006 on rental right and lending right and on certain rights related to copyright in the field of intellectual property must be interpreted as meaning that the communication of television and radio broadcasts by means of TV sets installed in hotel rooms does not constitute a communication made in a place accessible to the public against payment of an entrance fee, and therefore gives rise to a payment obligation for the use, reproduction and exploitation of intellectual property rights.
The CJEU held first that the distribution of a signal by means of TV sets by a hotel establishment to the customers staying in its rooms, whatever technique is used to transmit the signal and regardless of the private nature of the rooms at the hotel, constitutes a communication to the public. Regarding the existence of consideration for the broadcast, however, the CJEU held that the Directive must be interpreted in light of the Rome Convention, done on October 26, 1961, the reference legislation. Therefore, in view of the provisions in the guide to the Rome Convention prepared by WIPO, the CJEU concluded that the Directive requires a payment specifically requested in return for a communication to the public of a TV broadcast, and accordingly, the fact of payment for a hotel room, or for a meal or drinks in a restaurant or bar where TV broadcasts are aired is not to be regarded as a payment of an entrance fee within the meaning of the Directive.

3 Supreme court judgment rendered on February 24, 2017, on nature of sport representation contracts and statute of limitations for action brought in connection with them

The Supreme Court dismissed the cassation appeal and appeal for procedural infringements brought against the judgment rendered by Bizkaia Provincial Appellate Court by a company and a recognized football player.
In this case, the sport intermediary company and the player concluded a representation contract in which that company undertook to find a professional football team that would sign up the player, in return for a commission fee, plus 10% of any variable compensation that the player would receive (including any payments derived from sport image rights) from the Club hiring him.
After the agreement was concluded, the player's parents set up a company, and his image rightswere transferred to it. This company also entered into an agreement with the UK club, to license the use, development and exploitation of the player's image rights, under which the UK club paid the company, not the payer, this portion of his compensation (which reduced the commission fees to be paid to the intermediary company).
After the player failed to pay any of the sums covenanted with the intermediary company, that company sued the player and the company set up by him, to claim the variable portion of his agreed salary. A first instance, the court dismissed the appeal, but not so the provincial appellate court, which partially upheld the appeal lodged with it, and ordered the player and the company holding the image rightsto pay a given sum to the intermediary company.
The player and the company holding his image rightslodged a cassation appeal with the Supreme Court, pleading that the intermediary company did not participate in the conclusion of the agreement with the UK club, and that the statute of limitations period for the debt had ended after three years.
The Supreme Court dismissed the first ground, because it is the lower court that is responsible for interpreting contracts. It dismissed the second ground also, after concluding that, although the three-year statute of limitations is actually applicable to

sport representation contracts, in that they contain the role of a professional agent providing services that fall within the management of another's business transactions, that statute of limitations should start to run from the date on which the services stopped being provided, which in the case under examination means that the period had not ended when the complaint was filed.

4 Madrid high court judgment rendered on February 24, 2017, on holding a football club jointly and severally liable for labor debts under sponsorship contract with handball club in insolvency proceeding

Madrid High Court dismissed the appeal lodged against the judgment upholding the claim for salaries filed by several players for a handball club against that club and a football club, the sponsor of the handball club, after concluding that both entities were a single integrated enterprise for labor law purposes.
Although the sponsorship contract signed between both entities could be held excessive in some cases as a result of the considerably presence of the distinctive elements of the sponsor in the activity of the sponsored party, according to the court, this is an issue that is incumbent only on the parties to the contract, and therefore we are unable to find the existence of a single integrated enterprise, because the existence of a common cash pool, or intermingled workforces, or the external appearance of a single unit was not evidenced. It was not substantiated either that the sponsor had any influence over how the institutional relationships between the sponsored party and sponsor took place, nor was it a determining factor for these purposes that the sponsor's brand name appeared on the club's equipment or in its pressroom, which are characteristic elements of a sponsorship contract.

5 Supreme court judgment rendered on March 13, 2017, on classification of State Tax Agency (AEAT) claim in insolvency proceedings

A football club filed an ancillary claim against the insolvency manager and AEAT seeking reclassification of the specially preferred claims held by AEAT. The lower court partially upheld the claim and ordered reclassification of the claims, which lost their specially preferred status.
The Supreme Court upheld the cassation appeal lodged by AEAT, after concluding that the claims held by AEAT against the insolvent debtor, secured with a security interest in future claims not existing when the insolvency order was issued, but derived from legal relationships existing before the insolvency order, must be deemed resistant to the proceeding, and therefore, classed as specially preferred claims, even though the claim in which the security interest was provided arose after the insolvency order. By contrast, security interests in claims deriving from agreements or legal relationships whose defining characteristics are set out in the deed of establishment of the security interest but which remain to be arranged or have not arisen when the insolvency order was issued will not be resistant to the insolvency proceeding.
Regarding the extinguishment of the security interest due to satisfaction of the condition subsequent, the Supreme Court held that the fact that the security interest was established to secure a deferred tax debt does not mean that the reversal of the deferral extinguishes the security interest, but rather that the fact of the debt becoming enforceable as a result of the reversal would justify the ability to enforce the security interest.

6 Judgment rendered by Vigo Criminal Court no 3 on March 16, 2017, on the criminal offense of injury caused by breach of *lex artis* law

An elite athlete brought a complaint against the doctor who treated his knee injury, pleading that the amputation of a lower limb was caused by a breach of the *lex artis* law.
After examining the evidence produced and the required expert reports, the Criminal Court imposed a two-year custodial sentence on the doctor who treated the plaintiff in addition to a specific disqualification for the right to passive suffrage for the length of the sentence, and a specific disqualification for practicing the medical profession for a four-year period, in addition to the related civil liability derived from the criminal offense, as the perpetrator of a criminal offense of grossly imprudent injury with the loss of a principal limb and serious deformity, as a result of not carrying out, in the judgment of the court, the necessary diagnostic tests, resulting in the associated delay in the diagnosis of the traumatic injury that was the reason for amputation of the patient's leg.
The doctor was ordered to indemnify the claimant for foreseeable medical expenses and the financial loss caused by increased mobility costs.

7 Judgment rendered by Pamplona Labor Court number 3 on March 20, 2017, on validity of an employment contract signed between professional footballer and football club with a scanned signature

A football club filed a claim against a player for breach of contract, pleading that the player had signed an

employment contract with the club to join the club for four seasons, and despite this, had later renewed the contract the player had with his current club. The claimant therefore requested payment of the 12 million euro indemnity stipulated in the contract, in the signature of which the player's representation agency had acted at all times.
The court acknowledged at first that Royal Decree 1006/1985, of June 26, 1985 on the employment relationship of professional athletes provides a number of formal requirements for employment contracts of this type, including that they must be executed in writing in three counterparts. It also admitted that this requirement regarding its form is only laid down for evidence purposes. Accordingly, since the main subject-matter of the proceeding was to determine whether there had been genuine consent by the player to the employment contract, which had allegedly been provided through a scanned signature following a sequence of emails between the parties, evidencing, in the club's judgment, that there had been an actual negotiation process which concluded with the signing of that contract, the court found that from the evidence produced (documentary, witness and expert IT evidence) it could not be determined that the player had sent the email with the attached employment contract containing his scanned signature. It could not be affirmed, therefore, that the contract had been perfected and was fully enforceable legally.

8 Judgment rendered by Supreme Court on March 27, 2017, on criminal fraud by the chairman of a football club

The Supreme Court found guilty of criminal fraud the chairman of a football club, who, to secure credit and guarantors for the club, hid the termination of a sponsorship contract from the club's board of directors and members, by drawing up a number of bogus documents on sums that were going to be delivered by that company.
Against the decision reached on the appeal, the Supreme Court found that there was not a genuine concurrence between the offenses, but rather, between provisions, after concluding that the criminal misappropriation was a subsequent act sentenced jointly with the criminal fraud, and therefore both offenses protect the same asset, capital, and do not warrant separate punishment, as criminal misappropriation is embedded in criminal fraud.

9 Judgment rendered by Madrid High Court on April 24, 2017, on surcharge for failure to pay football club's tax debt

The high court dismissed an application for judicial review filed by the applicant, a football club, against which an enforced collection interlocutory order was rendered as a result of the failure to pay over tax withholdings from income from movable capital (personal income tax).
The court found that the enforced collection interlocutory order was rendered after deferred payment of the tax debt had been denied. Moreover, it transpires from the administrative proceeding that the claimant did not pay over the tax debt in the voluntary payment period, or before notification of the interlocutory order, and therefore, under article 28 of the General Taxation Law, the ordinary 20% surcharge and late payment interest would be chargeable, because the voluntary period had ended and the enforcement period had commenced before the debt was paid by the applicant.

10 Judgment rendered by Supreme Court on April 25, 2017, on claim for damages in respect of administrative sanction

The government lawyer lodged a cassation appeal against the judgment approving the indemnification payable to a cyclist, sanctioned by the Spanish competition and sport disciplinary committee (CNCDD - Comité Nacional de Competición y Disciplina Deportiva) and the Spanish cycling association (Real Federación de Ciclismo), as a result of a doping test, in which irregularities were found in the taking of samples.
The Supreme Court dismissed the appeal, and recognized the cyclist's right to indemnification, after upholding that all the elements determining the government's liability were present in the harm suffered by the cyclist as a result of the sanction imposed by the CNCDD, in other words, the unlawfulness of the harm (the cyclist had no legal obligation to bear the harm), the existence of real, individual and quantifiable harm, and a clear causal link between the negligence that occurred in the doping test, the sanction imposed on the cyclist, and the subsequent economic and financial harm suffered by the cyclist.

11 Barcelona provincial court judgment rendered on May 25, 2017, on liability of board of directors for football club's losses

The provincial appellate court dismissed an appeal lodged by a football club against the judgment dismissing the joint liability of given members of the club's board of directors for the losses generated while the club was under their management.
The court of first instance dismissed the claim after concluding that losses justifying the claimed liability of the members of the club's management had not been evidenced.
The provincial appellate court found that the requirements for bringing declaratory action for the defendants' liability were not satisfied, namely: (i) the existence of uncertainty over the existence, scope or

type of a legal relationship; (ii) the emergence of a loss by reason of the uncertainty, and (iii) the absence of other means to bring it to an end. The appellate court declared that uncertainty was absent, if that uncertainty was over the inexistence of losses, when the appellant has already accepted, by discontinuing, that such losses did not exist. It may be inferred from the absence of uncertainty that there was no loss (above all, by requesting at second instance that only five board members be held liable for the losses, not all of them, which, moreover, means for the appellate court a material alteration to the action brought).

12 Judgment rendered by Supreme Court on June 1, 2017, on right to privacy and data protection in relation to the blood samples taken from professional athletes

An elite athlete appealed against the judgment by Palencia Provincial Appellate Court dismissing the appeal against the judgment at first instance, denying the claim for the Spanish athletics association (RFEA - Real Federación Española de Atletismo) and the IAAF to be held liable for unlawful interference with her privacy and data protection rights "as a result of the tests on her blood and the storage of the data obtained in those tests".

The Supreme Court dismissed the appeal, held that the drawing of blood samples must be considered a doping control measure that is proportionate, reasonably intrusive and respectful of the athlete's dignity, which at the time had sufficient legal support, on the basis of the provisions on the protection of health (articles 43.1 and 43.2 of the Spanish Constitution), and on cleanliness in sport, which also falls within the function of encouraging sport. Specifically, article 5 of Organic Law 7/2006, of November 21, 2006, on protecting health and combating doping in sport, lays down an obligation for athletes with licenses to participate in official competitions to undergo, within and outside competitions, any tests that may be determined by the Health and Anti-Doping Control and Monitoring Committee, and provides also for the processing of the data obtained in those tests.

13 Binding ruling V0023-17 issued by DGT on January 3, 2017, on treatment of fees and payments received by nonprofit association by reason of various activities related to dissemination of the law on sport

The requesting entity is a nonprofit entity of a scientific nature which organizes a range of activities, such as congresses, conventions or seminars, in return for the payment of ordinary or one-off fees for attending the conventions. Additionally, it holds courses for which it charges an enrollment fee, and receives various sums in respect of sponsorship and collaboration agreements. The request concerned whether the sums received are subject to, and if so, exempt from, VAT.

Firstly, the DGT concluded that insofar as it is a supply of services and regardless of the purposes sought, it is subject to VAT on the basis of article 4 of the VAT Law. However, the supplies of services made by the requesting entity either for third parties, or for its associates, in respect of which it invoices a price separate from the fees determined in its bylaws, due to having as their purpose satisfying the private or individual interests of the recipient of the service, cannot benefit from the exemption.

Regarding the ability to apply to the courses, conventions and seminars the exemption stipulated for cultural activities, the DGT specified that the exemption will only apply if the supplier of the service is a public entity, or a private entity carrying on the activities characteristic of libraries, museums and art galleries, artistic performances or the organization of exhibitions. Similarly, the DGT restricted the exemption for educational activities to cases where the supplier is an entity legally authorized to carry on those activities, which provides a teaching service included on a curriculum in the Spanish education system which has been approved by the Ministry of Education, Culture and Sport.

Lastly, the amounts received in respect of sponsorship and collaboration agreements do not qualify as consideration subject to VAT because they are not deemed to be supplies of services.

14 Binding ruling V0233-17 issued by DGT, on January 31, 2017, on business status notification and tax obligations for a non-Spanish resident individual who carries on agency activities for athletes as a self-employed worker

The individual, a non-Spanish resident, worked as an agent for athletes, and did not have a permanent establishment. The request concerned his business status notification and tax obligations in connection with practicing his profession:

- He is subject to nonresident income tax, being liable to tax only on the income which, in accordance with the Revised Nonresident Income Tax Law, is deemed obtained in Spain. Accordingly, among the income deemed obtained in Spain and subject to nonresident income tax is that derived from services that serve economic activities conducted in Spain, except as provided in the applicable tax treaty.

- With respect to the nonresident income tax return, the requesting individual must file form 210, the filing period for which varies according to the type of income reported (article 5 of Order eEHA/3316/2010, of December 17, 2010).

- Since it is a supply of services in Spain, the requesting individual will be required to appoint a representative, even if he does not operate through a permanent establishment, in accordance with article 10.1 and article 24.2 of the Revised Nonresident Income Tax Law.

- The requesting individual must be treated as a taxable person for VAT purposes under article 164 of the VAT Law, and as such, he must file periodical self-assessment returns (form 303) quarterly or monthly, as applicable, in addition to the annual summary return (form 390).

15 Binding ruling V0332-17 issued by DGT, on February 7, 2017, on determining place of supply and tax treatment for support services to cycling teams for VAT purposes

The requesting individual, established in Spanish VAT territory, was providing mechanical and team support services in cycling races for an entity established in the US, which assistance services were provided physically in various EU member states. The request concerned where the services must be deemed to be supplied, in addition to the VAT treatment for this activity.
The DGT ruled that the activity conducted by the requesting individual satisfied the requirements under article 5 of the VAT Law to be deemed a trader or professional, and that, therefore, the assistance provided to the cycling team, on the basis of article 11 of the VAT Law will be treated as supplies of services, and will be subject to VAT if they are considered supplied in Spanish VAT territory.
The service will be considered supplied in Spanish VAT territory, and subject to VAT, if it is physically supplied in Spanish VAT territory in relation to a cycling race that runs through Spanish VAT territory. If it is subject to VAT, the requesting individual will be required to charge VAT, calculated at 21 percent.

16 Binding ruling V0384-17 issued by the DGT, on February 14, 2017, on treatment of cycling judges who are members of Spanish cycling association, for the purposes of the tax on business activities, VAT and personal income tax

The requesting individuals were cycling judges and members of the Spanish cycling association.
The request concerned whether the activities of the cycling judges were subject to the tax on business activities and VAT and their taxation for personal income tax purposes, in addition, in this last case, to the ability to deduct on their personal income tax returns certain types of expenses (public charges, uniform, courses, work materials, etc.).
As to whether the activity was subject to the tax on business activities, under article 79.1 of the Revised Local Finances Law, the tax does not apply to activities conducted under a dependent relationship for labor law purposes or for an employer. As a result, if the cycling judges provide their services under a dependent relationship for labor law purposes they would not be subject to the tax on business activities. Otherwise, if they act as self-employed workers in their activities, they would have to register under group 048 of Section Three ("Arbiters for public events").
For VAT purposes, the judges are treated as traders for the purposes of article 5 of the VAT Law, due to organizing a set of human and material resources independently, to carry on a business activity. Article 20 of that law provides, however, that the activities carried on by sports associations are exempt from VAT, and therefore, both if the judges provide their services to the cycling association under an administrative relationship or a dependent relationship (article 7.5 of the VAT Law), and if those services are supplied directly to a sport club or to an organizer of sport competitions, those supplies will be subject to but exempt from VAT.
Lastly, concerning the personal income tax on the amounts received by judges in respect of their services, the DGT classed that income as earned income, because they do not organize the means of production or human resources. As a result, the DGT concluded that the ability to deduct certain expenses (public charges, license, uniform, etc.) is subject to article 19.2 of the Personal Income Tax Law, and therefore they will not be treated as expenses deductible from earned income.

17 Binding ruling V0514-17 issued by DGT, on March 1, 2017, on VAT treatment of enrollments for sport competitions organized by nonprofit company

The requesting entity was a nonprofit sport club organizing amateur sport competitions. The club's enrollment fee was used to cover the costs of the competition, and any amounts over and above those costs remained at the club to be used for the same purposes or to support good causes.
The request concerned the treatment of the enrollment fees paid by amateur athletes for VAT purposes.
The DGT concluded that the enrollment fees for sport events organized by a club deemed an outreach entity are not subject to VAT, because they are eligible for the exemption under article 20.1.13 of the VAT Law, and therefore the services supplied to individuals engaging in the sport or in physical education, by private outreach sport entities will be exempt from VAT.

18 Binding ruling V0666-17 issued by DGT, on March 15, on VAT treatment of reservation of right to broadcast sport sponsorship format

The requesting entity was a government-owned company, engaged in radio and television broadcasting. It had acquired the free-to-air broadcasting rights for a sport event, for consideration. The licensing company reserved the right to include a sport sponsorship format during the broadcasting of the event.
The request concerned whether the requesting entity had to issue an invoice and charge VAT to the licensor, for the rights to broadcast the sport event.
DGT replied that, although public sector companies are not subject to VAT, radio and television public entities are, if they carry on commercial or business activities, and generate advertising revenues other than from the public sector. In the requesting entity's case, the broadcasting of sponsored content is a requirement to be able to benefit from the licensed rights; the sponsorship contracts were concluded by the licensor and the third-party advertisers, in which the requesting entity did not participate and that company could not alter the format or the terms and conditions of those advertising contracts. To the extent that the sport sponsorship format is inherent to the licensing of the rights to broadcast the event, it cannot be considered that there is a supply of advertising services by the requesting entity, and therefore it is not subject to VAT.

19 Binding ruling V0691-17 issued by DGT, on March 16, 2017, on VAT and personal income tax treatment of licensing of actor's image rights

The requesting individual had participated in the recording of an advertising spot in respect of which he received both a fee and a sum for image rights.
The request concerned the applicable withholding on the amount related to image rights and whether it was subject to VAT.
The DGT concluded that under article 101.10 of the Personal Income Tax Law and article 101.1 of the Personal Income Tax Regulations, the percentage to be withheld and paid over in respect of the licensing of the right to exploit image rights, no matter how they are classified, will be 24%.
As to their being subject to VAT, supplies of services by actors in the conduct of an activity for consideration are subject to VAT under article 5 of the VAT Law, which provides that activities related to liberal or artistic professions are trading or professional activities.

20 Binding ruling V0687-17 issued by DGT, on March 16, 2017 on personal income tax treatment of indemnity paid by an athlete or new club to the sport entity owning the federative rights (player registration) of the athlete, following termination of contract at the will of the player

The requesting football club was considering hiring a player from another team, for which it would have to meet the payment of the relevant indemnity for termination of the contract with his previous employer at the will of the player (buy-out clause). The request concerned the treatment of that indemnity for personal income tax purposes.
The DGT concluded that the obligation to pay the indemnity to the club with which the player's employment contract is terminated lies with the player, and the new club is secondarily liable for that obligation. Accordingly, a distinction has to be made between the indemnity paid by the player and the funds delivered by the new club for the payment of the indemnity:

- The payment of the indemnity by the football player, out of his own funds, or following a contribution of funds by the club, means a financial loss for him insofar as it is an obligation that is his responsibility.

- Concerning the payment by the new club to the athlete of a sum equal to the indemnity, the DGT recalled that the payment of those sums to the player cannot be characterized as earned income, but must rather be classed as a capital gain for the player, in that the payment–directly or indirectly – of buy-out clauses to acquire a player's federative rights is an investment in an intangible asset, not an expense.

NEW LEGISLATION

1. Decision rendered on March 1, 2017, by the Chairperson-in-Office of the National Sports Council, publishing the amendment to the Bylaws of the Spanish ice sports association (Federación Española de Deportes de Hielo)

2. Decision rendered on March 27, 2017, by the Chairperson-in-Office of the National Sports Council, granting recognition of the sport training activities for level II judo, authorized by the General Secretary for Sport at Xunta de Galicia, the Galician autonomous community government, and conducted by the Galician judo and associated sports association (Federación Gallega de Judo y Deportes Asociados)

3. Decision rendered on March 31, 2017, by the Chairperson-in-Office of the National Sports Council, publishing the amendment to the Bylaws of the Spanish boules/petanque association (Federación Española de Petanca)

4. Decision rendered on March 31, 2017, by the Chairperson-in-Office of the National Sports Council, publishing the amendment to the bylaws of the Spanish rescue and lifesaving association (Federación Española de Salvamento y Socorrismo)

5. Decision rendered on June 1, 2017, by the Chairperson-in-Office of the National Sports Council, correcting errors in the decision of December 19, 2016, on athletes who have attained the status of high-level athletes

6. Decision rendered on June 1, 2017, by the Chairperson-in-Office of the National Sports Council, on the list of high-level athletes relating to the first list for 2017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