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Sports & Entertainment

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Judgment of the Basque Country High Court dated May 26, 2015

Summary: A professional cyclist belonging to an elite team is not considered to be entitled to severance for termination of his temporary employment contract, because the provisions of article 49.1.c) of the Workers' Statute do not apply to him.

Ángel Olmedo Jiménez

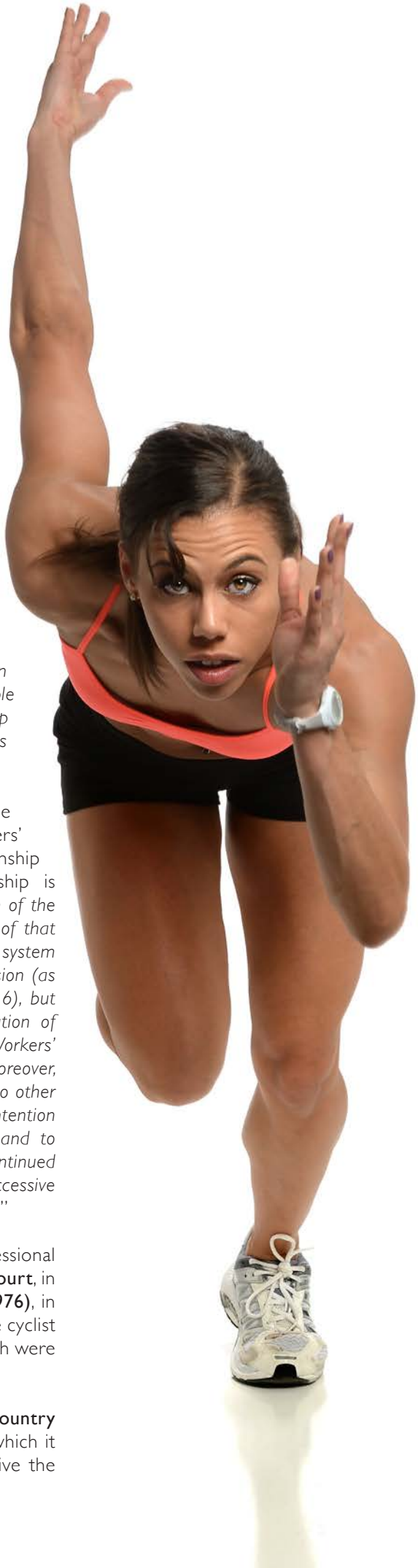
Issue under debate

The legal issue at the heart of the judgment is whether elite professional athletes have the right to receive the severance set out in article 49.1.c) of the Workers' Statute when their employment contracts are terminated (which, it is a well-known fact, are always temporary in the employment relationships entered into pursuant to Royal Decree 1006/1985).

This issue had been analyzed in the Supreme Court judgment of **March 24, 2014, and in cassation appeal number 61/2013 (RJ 2014/1575)**. The **Supreme Court** dismissed the appeal lodged against the national appellate court judgment of July 16, 2012, by the Association of Professional Cycling Teams.

In the case analyzed, the National Appellate Court had recognized the right of professional cyclists to receive the severance set out in article 49 of the Workers' Statute, where the employment contracts of professional athletes are terminated by the employer due to the lapse of time.

The Supreme Court judgment of March 26, 2014 confirmed the national appellate court judgment and, in a nutshell, held that cyclists with a contract signed pursuant



to Royal Decree 1006/1985 were entitled to that severance in cases where their contracts had terminated on expiration of their term.

Before that Supreme Court judgment was handed down, the **Castilla-La Mancha High Court** had ruled, in its judgment of **October 14, 2011 (AS 2011/2558)**, on the case of the professional cyclist Rubén Lobato, whose employment contract had been terminated by his sports team, Saunier Duval, due to expiration of the contract term.

That judgment also recognized the worker's right to receive the severance set out in article 49.1.c) ET, by reasoning that: "*the severance for the termination of certain temporary contracts as set out in article 49.1.c) of the Workers' Statute (RCL 1995, 997) applies secondarily to cases of termination of the employment contracts of professional athletes, because that provision is expressly applied in article 21 of Royal Decree 1006/85 (RCL 1985, 1533), because the provisions in the Workers' Statute on this point are not incompatible with the special nature of this employment relationship and because, in this case, the essential requirements for that provision to apply are met.*"

The court also set aside the argument that the severance set out in article 49.1.c) of the Workers' Statute does not apply to the employment relationship of professional athletes because that relationship is unavoidably temporary, by holding that "*protection of the contractual freedom of athletes, which is the basis of that provision, can justify the establishment of a severance system that is consistent with the acceptance of that provision (as does Royal Decree 1006/85, especially in article 16), but is not a sufficient reason to preclude the application of the severance established in article 49.1.c) of the Workers' Statute to the termination of an athlete's contract; moreover, the severance for termination of the contract is for no other reason, as we have stated, than the legislature's intention when implementing a certain employment policy, and to compensate the worker for the time spent providing continued services for the same employer, albeit through successive temporary contracts, or perhaps for that very reason.*"

The same view was taken also in relation to a professional cyclist in the same team, by the **Cantabria High Court**, in its judgment dated **July 20, 2012 (JUR 2012\389976)**, in which it was specifically taken into account that the cyclist was Mr. Lobato's fellow team member and that both were professional cyclists.

The opposite view was taken by the **Basque Country High Court in its judgment of May 26, 2015**, in which it denied the right of a professional cyclist to receive the severance, as explained below.

Facts of interest

David López, a professional cyclist from the Movistar team, had a contract with that company from January 1, 2007 to December 31, 2012.

In 2011, the cyclist entered into talks with British team Sky, and received an offer from it in 2012, as a result of which he decided to join that team in September 2012.

On September 29, 2012, Mr. López granted interviews about being signed up by that team and retweeted a note from Sky announcing the agreement reached by the parties for the 2013 and 2014 seasons.

On September 30, 2012, Movistar notified all the riders on its team whose contracts were ending on December 31, 2012 (which included Mr. López) of the termination of their fixed-term employment contracts.

On December 31, 2012, David López terminated his employment contract with Movistar and as a result of that termination, the cyclist is claiming from Movistar payment of the severance set out in article 49.1.c) of the Workers' Statute.

Court judgments

It should be noted, firstly, that the lower court's judgment, the **Judgment of Bilbao Labor Court number 3, dated January 14, 2015 (AS 2015\2)**, found against the severance under article 49.1.c) of the Workers' Statute applying to David López, on the grounds that:

a) It is not payable to elite athletes, which was considered to be the case of Mr. López, who provided services to Movistar and then to Sky, "two of what are considered to be the best teams in the world in 2012 and 2013 and two of the most distinguished in cycling."

b) The severance cannot be held to be payable where the failure to renew the contract is entirely the decision of the athlete, who, in this case, had agreed to provide services to Sky for the following season, and considering that the notice of termination due to expiration of the agreed term took place the day before Mr. López announced that he was signing up with the new team.

On appeal, the **Basque Country High Court,** which considered that professional athletes may be entitled to the disputed severance, noted that the **Supreme Court judgment** itself determined a number of exceptions (specifically two) to the automatic application of that compensation.

And both of these exceptions, i.e., the fact that it was the athlete who did not wish to renew the contract, and that Mr. López was an elite cyclist, were present in this case, and served as a basis for the court to reject the entitlement to severance for Mr. López.

This judgment had a dissenting vote, by Judge Díaz de Rábago, who disagreed with the majority decision and considered that Mr. López's appeal should have been upheld.

Briefly, the dissenting judge argued that no exceptions were allowed by the article in the law and that the High Court's interpretation of the supreme court judgment was not lawful, besides stating that, in his opinion, from the description of facts, it could not be concluded that it was Mr. López who terminated the contract with Movistar by his own decision, but merely that he had an agreement with Sky which potentially might not have been fulfilled in the future, and the only event terminating the contract was the notice given by Movistar on September 30, 2012.

The Superior Court of Justice of the Basque Country denies compensation to a professional cyclist enrolled in an elite squad

Spanish and Portuguese **professional football leagues** file a complaint with the **European Commission against FIFA** ban on third-party ownership

GARRIGUES BRUSSELS

Miguel Ángel Bolsa Ferruz

In December 2014, FIFA decided to introduce in its legislation a ban on third-party ownership (TPO) of football players' economic rights.

The TPO mechanism allows an investor (normally an investment fund) other than the club which employs the player, to acquire from the club a percentage of that football player's economic rights. Accordingly, if the player is transferred in the future, the investor is entitled to receive a percentage of the amount paid for the transfer.

From the investor's perspective, it is a relatively standard investment, in which a return is expected if, thanks to the player's performance, his value increases in the transfer market. From the club's perspective, this mechanism allows the player's economic rights to be monetized (an asset that cannot be cashed in in the short term) while he continues playing for the club, which in turn gives liquidity, and enables other transfers to be financed on more competitive terms, or allows better contractual terms for the player in question. Essentially, it is an alternative form of financing for football clubs which has become relatively common in some international leagues, particularly in Brazil, and which, among other consequences, allows modest clubs to retain their players for longer periods of time.

The Spanish and Portuguese professional football leagues launched a complaint with the European Commission in February 2015 contending that the FIFA ban on TPO infringed EU law and, in particular, the provisions on the free movement of capital and competition.

With respect, firstly, to free movement in the internal market of the EU, the ban on certain type of investments (investing in economic rights of football players, in this case) entails a restriction on the free movement of capital within the European Union (article 63 of the Treaty on the Functioning of the European Union, "TFEU"), which could make that ban fall within the scope of that freedom.

Secondly, the ban would also fall within the scope of EU competition law (articles 101 and 102 of the TFEU) which, as we have mentioned in previous issues of this newsletter, has a particular impact on the sports world, concerning some issues as yet to be explored. From a competition law perspective, the FIFA's decisions could clearly be seen as potentially restricting competition (because they are adopted by an association of federations) and as abuse of a dominant position in the market for the organization of sports competitions. The restriction on competition could be identified by the fact that a number of economic operators might be agreeing with each other not to use a certain type of financing, thereby reserving the participation in the transfers market to clubs and preventing any other entity from having access to that market.

Although from both standpoints it would seem that, a priori, the ban on the sale of football players' economic rights to third-party investors would entail on a prima facie basis an infringement of the provisions of the Treaty, the ban could prove to be justified if it were evidenced that it pursues an objective of general interest and that it is appropriate for achieving that aim and also proportionate (that is, that the measure or practice entails the minimum indispensable restriction).

In this regard, the proponents of the ban on TPO have been putting forward a range of arguments as to why they consider that this measure could contribute to avoiding situations that adversely affect clubs or their financial stability and to reducing the risk of manipulation of competitions. When evaluating these arguments, the European Commission must, as mentioned, evaluate not only whether they pursue objectives that are genuinely in the general interest, but also whether there are any other less restrictive alternatives for achieving those objectives [take, for example, alternatives such as rules guaranteeing transparency in TPO situations, the inclusion of contractual clauses preventing investment funds from exerting influence on sports decisions, or placing certain limits on TPOs (on the number of players per team or on the financing terms, for example)].

In light of the precedents in EU law, it seems likely that the European Commission will, formally or informally, lean towards rejecting an absolute ban on TPOs, although it cannot be ruled out that it might accept alternatives, less restrictive measures that could limit the adverse effects which the proponents of the ban attribute to TPOs while taking advantage of the benefits which this type of financing can offer.

The employment regime **for professional football players** in Peru

GARRIGUES PERÚ

Franco Muschi

I am convinced that law and football were forced into a friendship which to date has been the source of continual disagreements and disputes.

This is no different in Peru. The professionalization of football led to the creation of a legal regime parallel to the game, with specific rules which, in many cases, run counter to the ordinary employment rules. In the following lines we will attempt to give a general overview of the employment regime for professional football players in Peru.

Applicable legal framework

Revised Legislative Decree 728, Labor Productivity and Competitiveness Law, approved by Supreme Decree 003-97-TR ("LPCL"), is the general law on the rights and obligations governing employment in the private sector and is, therefore, the general framework applicable to all employment relationships, including those of professional football players.

Like most special regimes, however, the employment regime for professional football players is governed by a law with its own identity and, in many cases, with elements that clash with the provisions of the LPCL. Thus, the biggest challenge facing the Professional Football Player Law 26566, of December 29, 1995 ("LJFP") – enacted 20 years ago – was the formal definition of the employment relationship of football players with their clubs, by including them in the LPCL regime and recognizing a series of elements specific to the pursuit of sports.

Unfortunately, the LJFP was drawn up as an incomplete law in which many points remained to be regulated. In that context, and for almost a decade, the LJFP remained completely silent on basic questions such as the rules on the trial period, the determination of remunerative and non-remunerative items, the satisfaction of the legal requirements laid down for the hiring of foreign professional football players, and the grounds for termination of the employment relationship, among others.

It was the existence of those legal loopholes that was led to the proposal to create a statute (e.g. collective agreement) governing the main benefits, obligations and rights of professional football players. In that scenario, and as a result of the negotiations held between the Football Players' Association Union of Peru – body representing the football players – and the Peruvian football association, Federación Peruana de Football, on July 1, 2005, the Peruvian Professional Football Players' Statute ("EFPP") was created through which to implement the rights and obligations applicable to the pursuit of professional football, which refers to, and orders the application – on a secondary basis– of, the provisions contained in the LPCL and the Civil Code.

Therefore, in Peru, we have twin sets of rules: the provisions –albeit basic – included in the LJFP and, as a supplementary instrument, the EFPP, which sets out a number of rights and

obligations of professional football players. It is also notable that the relationships with training personnel and assistants, have not, unfortunately, been included within the scope of application of the LJFP, so those individuals continue to be treated as independent personnel without any employment law protection.

Employment contract of football players

Formal aspects

Firstly, the minimum terms and conditions of employment contracts must comply with the LPCL although, again, we must insist on the special features of the activities carried on by professional football players. According to article 5 of the LJFP, employment contracts must be concluded in writing and registered with the Peruvian football association and the Ministry of Employment and Job Promotion ("MTPE").

Moreover, the EFPP contains, in chapter III, specific rules on the contracts of professional football players. Those rules include the following: (i) rewards for matches, insurance and other remuneration items must be stipulated in the contract, (ii) the contract must be signed in four counterparts, one each for registration with the Peruvian football association, the Ministry of Employment and Job Promotion, the football player and the Club, (iii) the contract will become fully valid and in force merely on its signature by the parties, without needing the fulfillment of any future formalities such as registration, (iv) the terms and conditions of the employment relationship between football players and

[1] The contract form attached in an annex to the EFPP is, in practice, a single format. Departure from any of the provisions on the form would make it invalid for registration with the federative authorities of the FPF and, thus, create serious impediments for pursuit of the sport (e.g., inability to obtain the member card which entitles the player to participate in the competitions organized by the FPF).

clubs must be included in the "contract form" which is an annex to the EFPP[1].

Trial period

Article 14 of the EFPP contains the provisions on the so-called "trial period" which takes place before the employment contract is signed. It lays down that the parties must sign a document specifying the period in which the professional football player may be on trial, in which, evidently, he must show the extent of his personal and sports ability in order to obtain the desired employment contract. The maximum trial period is 30 days extendible for a further 30 days and will terminate if the professional football player participates in any official match representing his club.

Employee benefits

According to article 7 of Law 26566, the professional football player is entitled to the benefits stipulated in the contract, especially the following: (i) weekly rest period, official holidays and vacation period, according to the nature of the contract, (ii) sale of his image rights and/or participation in any sale of his image rights by the club, (iii) participation in the payment for his transfer by the club acquiring him, and (iv) actual occupation, not being excluded from training sessions and other instrumental or preparatory activities for the pursuit of the sport, except in the event of a sanction or injury. In this regard, article 8 of the EFPP seems to establish exceptions to the remunerative nature affecting the income received by professional football players, also specifying that the parties may stipulate in the contract the payment of remunerative income such as the signing bonus, rewards for matches, extraordinary bonuses and any other items agreed by the parties.

Rules applicable to foreign football players

According to article 1 of the LJFP, foreign football players must be hired in accordance with the employment regime for private activity, that is, with the provisions of Legislative Decree 689, Foreign Employee Hiring Law. It is also mandatory for the player to have the appropriate immigrant status (i.e., a work visa), allowing him to perform his job according to the provisions of Legislative Decree 703, Immigration Law.

There are serious practical problems with applying the immigration legislation to the particular characteristics of the regime for professional football players. It is very common for foreign players to prefer to avoid the formalities and procedures required for foreign workers, giving rise to a concerning departure from the law.

As an example, the provision in the EFPP that no "future formalities" will be required for execution of the contract is a tool that allows the football player to sign a contract—according to the single form contained in the EFPP—without fulfilling the formalities of an employment contract for foreign personnel, which must be registered with the Ministry of Employment and Job Promotion.

Social security and health benefits

According to paragraph 3 of article 1 of the LFP, professional football players are entitled to social security health and pension benefits under the National Pensions Systems ("SNP") or the Private Pensions System ("SPP"). Moreover, articles 29 and 30 of the EFPP recognize the right of professional football players to life insurance and the club's obligation to make social security contributions for health benefits.

Termination of the employment relationship

According to article 17 of the EFPP, the employment contract of a professional football player cannot be terminated unilaterally by either party. The contract may be terminated if there is just cause and/or sporting just cause during the season.

a) Termination of contract by the professional football player

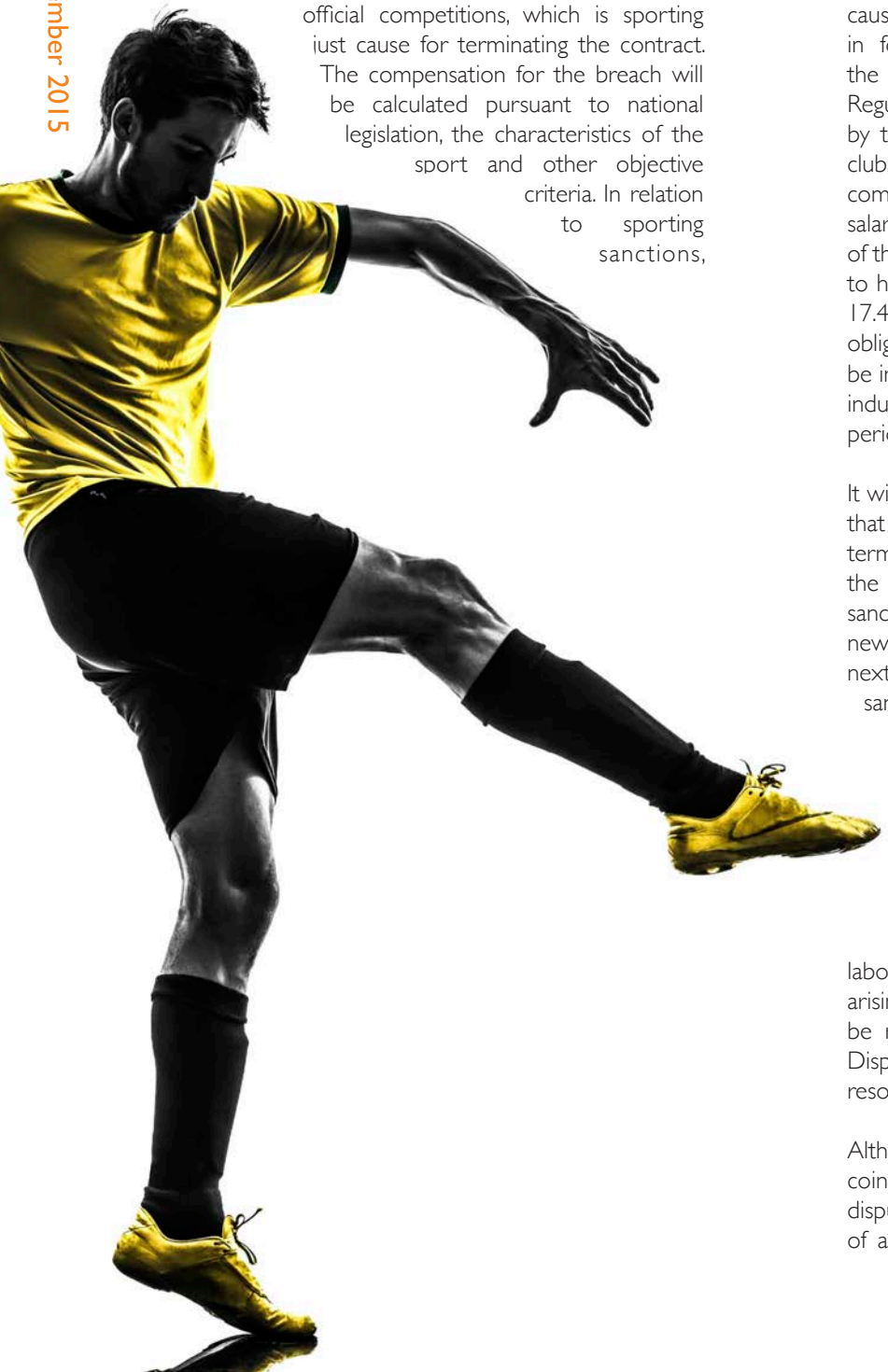
Resignation by the professional football player is a mechanism for terminating the employment relationship which is absolutely restricted in the area of professional football. Thus, unlike what happens in an ordinary employment relationship, in which the employee can terminate the contract by giving 30 days' advance notice pursuant to article 18 of the LPCL, this option is restricted in football.

In this context, potential just cause and sporting just cause may be mentioned as the only basis for unilateral termination of the employment contract.

Firstly, just cause and sporting just cause come to the fore on the subject of breaches attributable to the employer, as detailed, for example, in article 30 of the LPCL. In all these cases, there is an indirect dismissal and, as a result, the professional football player acquires the right to the payment of compensation. Additionally, just cause would include the existence of breaches

attributable to the club, such as not fulfilling the duty of actual occupation, the failure to comply with obligations concerning safety and health in the workplace (i.e., incorrect treatment of injury) or discrimination.

Secondly, as mentioned above, the provisions in article 15 of the FIFA Regulations on the Status and Transfer of Players ("RSTP"), stating that a professional football player can terminate his employment if he has appeared in fewer than 10% of official competitions, which is sporting just cause for terminating the contract. The compensation for the breach will be calculated pursuant to national legislation, the characteristics of the sport and other objective criteria. In relation to sporting sanctions, article 17.3 of the RSTP provides that in addition to the obligation to pay compensation, sporting sanctions will also be imposed on any player who terminates a contract during the protected period. The sanction will be a 4-month restriction on playing in official matches.



b) Termination of contract by the club

Article 20 of the EFPP determines that clubs cannot terminate the contract unilaterally unless there is just cause for dismissal pursuant to the national legislation in force, and/or sporting just cause according to the FIFA regulations and the Internal Employment Regulations of the clubs, which must be approved by the FPF. In cases of unilateral termination by the club, the professional football player will be entitled to compensation equal to one and a half times his monthly salary for each of the months remaining until the term of the contract expires, as well as any amounts payable to him in respect of welfare benefits. Likewise, article 17.4 of the RSTP establishes that in addition to the obligation to pay compensation, sporting sanctions will be imposed on any club that terminates a contract or induces termination of a contract during the protected period.

It will be presumed, unless established to the contrary, that any club signing a player who has unilaterally terminated his contract without just cause, has induced the professional player to terminate his contract. The sanction will consist of a ban on the club registering new players, either nationally or internationally, until the next registration period after the respective sporting sanction has been fully observed.

Dispute resolution

Disputes between the club and the professional football player are inevitable. Thus, in clear contradiction to the provisions applicable to the general employment regime which submits disputes to the jurisdiction of the labor courts the EFPP determines that any disputes arising between the football player and the club must be resolved by arbitration by the Conciliation and Dispute Resolution Chamber, which has two dispute resolution chambers and acts in a single instance.

Although the mechanism proposed by the EFPP coincides with the FIFA's recommendations regarding dispute resolution, we consider that the "imposition" of arbitration as a mechanism for resolving disputes

involving professional football players is questionable.

In this regard, Law 29497, which regulates the authority of the ordinary labor jurisdiction in the context of the New Employment Procedural Law, establishes at the end of additional provision six that arbitration for employment matters is only admitted if the parties employer and employee expressly agree to it at the end of the employment relationship and provided, moreover, that the employee's monthly income is greater than S/. 27,000 (USD 8,500). That provision clearly proposes a restriction on arbitration for employment matters, by removing the option to include a priori arbitration clauses or agreements in employment contracts and confining their use to personnel with a given monthly income, that is, employees in the middle or high salary range with special negotiating power.

Conclusions

As we have seen above, although professional football started in Peru at the beginning of the last century, the professional relationship of football players only became a regulated relationship quite recently in our country.

In that context, and with an incipient legal framework, it was collective negotiation that proposed the terms and conditions currently governing the employment relationship of professional football players.

Almost a decade has passed since that collective agreement, and we consider that the main elements regulating the employment relationship of professional football players need to be revised. Additionally, the existence of arbitration —with a single instance—as a mechanism for resolving disputes obviously means that there are no court judgments or technical analysis of issues of special interest, such as the option of refining termination clauses, the recognition of the employment relationship of training personnel, and the limits on the application of sporting sanctions, among others.

In a sports activity like football in which the continual revision of the rules of the game play an essential role, it is important to build legislative frameworks that are consistent with the reality of the sport, which is marked by a dynamic and globalized environment. This task still remains to be done.

Raised to **€30,000** the threshold for not having **to provide security to be granted** deferred or split payment

Isabel Cortés Pulido

Ministerial Order HAP/2178/2015, published in the Spanish Official State Gazette on October 20, 2015, raised the threshold to €30,000 for not having to provide security in applications for deferred or split payments. This threshold was formerly €18,000. The following points need to be taken into account when applying the new threshold:

- The exemption from providing security where the debts do not exceed €30,000 applies in relation to debts in both the voluntary payment period and the enforced collection period. However, in this latter case, any existing encumbrances on the debtor's assets when applying for the deferred or split payment will be retained.

- The amount to which the threshold applies is the aggregate amount of all the debts to which the actual application for deferred or split payments relates plus any others for which deferred payment has been requested and has not yet been decided.

- This new threshold applies to applications filed on or after October 21, 2015. Any applications for deferred and split payments in progress on that date will continue to be governed by the legislation in force on the filing date of the application.

- This threshold does not affect tax debts in respect of withholdings which, as a general rule, will continue to be non-deferrable.

Amendment of the Corporate Income Tax Law (intangible assets) by the Audit Law

Marta Benito Martín

Audit Law 22/2015, of July 20, published in the Official State Gazette on July 21, 2015, includes a final provision five amending Corporate Income Tax Law 27/2014, of November 27, 2014, effective for tax periods commencing on or after January 1, 2016 in relation to intangible assets.

For SADs (*Sociedades Anónimas Corporativas*, Spanish sports corporations), the expenses associated with the acquisition of players (acquisition rights), where economic consideration has been paid to obtain their services, are treated as intangible assets. Those rights are valued at their acquisition cost and are amortized for accounting purposes. Moreover, from an accounting standpoint, image rights are treated as intangible assets, given that, despite being an asset with no physical appearance, an economic value is able to be placed on them and therefore they may be amortized for accounting purposes. Furthermore, like any company, SADs can also have on their balance sheets non-sports related intangible assets, i.e., patents, concessions, trademarks, computer software, etc.

After being defined for SADs, the accounting treatment of intangible assets was amended by Law 22/2015, of July 20, 2015, , which determined as follows:

> *"Intangible assets are assets with a definite useful life. Where the useful life of these assets cannot be reliably estimated, they must be amortized over a ten-year period, unless another provision of primary or secondary legislation establishes a different period.*
>
> *Goodwill may only appear in the assets of the balance sheet where it has been acquired for consideration. It shall be presumed, unless proven otherwise, that the useful life of the goodwill is ten years."*

Accordingly, effective on January 1, 2016, article 12.2 of the Law establishes that intangible assets (with either a definite or indefinite useful life) must be amortized for tax purposes according to their useful life, and where their useful life cannot be reliably estimated, within a maximum annual limit of one-twentieth of their amount. Goodwill must be amortized for tax purposes within this maximum annual limit of one-twentieth of its amount.

Consequently, subarticle 13.3 regarding impairment losses on intangible assets with an indefinite useful life has been repealed.

News

Presentation of the Immersion in Sports Management executive program by Garrigues Sports & Entertainment and the Spanish National Football League

On October 5, 2015, the National Sports Council (CSD) hosted the presentation of the Immersion in Sports Management executive program organized by Centro de Estudios Garrigues, Garrigues Sports & Entertainment and La Liga, the Spanish football league, with the collaboration of the CSD.

The event was presided by the general manager of the CSD, Óscar Graefenhain, and attended by Javier Gómez, general manager of La Liga, Félix Plaza, partner at Garrigues, co-director of Garrigues Sports & Entertainment and co-director of the program, and by Ana Muñoz, academic director.

The presentation was also attended by a group of beneficiaries of the CSD scholarship program, such as Ana Montero (synchronized swimming), Nico García (taekwondo), Rubén de la Red (football), Jorge Garbajosa (basketball) and Elisa Aguilar (basketball).

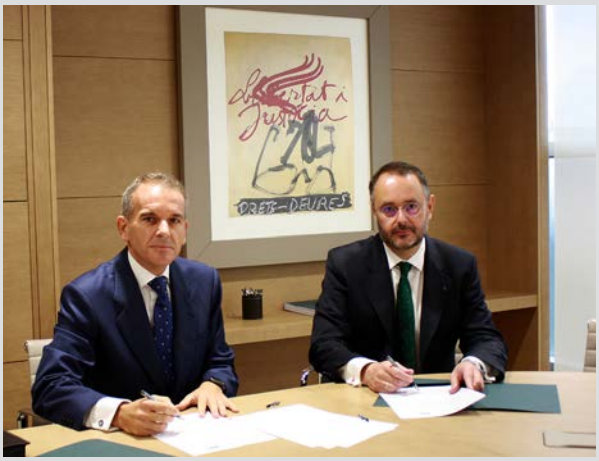
Garrigues participates in the International Sports Law Conference in Peru

On August 20 and 21, 2015, Garrigues Sports & Entertainment participated in the International Sports Law Conference held at the University of Piura, in Peru.

Franco Muschi, a senior associate at Garrigues Perú, spoke at the International Sports Law Conference. The subjects discussed included the definition of sports law, doping in sports, international sports justice, the employment contract of football players in Peru, transfers of minors and transfers of football players.

Garrigues Sports & Entertainment provides legal advice for the production of film "El Desconocido"

Garrigues Sports & Entertainment, leaded by Pedro Regojo and Martín Pedre, provided legal advisory services for the successful Spanish film "El Desconocido", which opened on September 25, 2015.



Garrigues Sports & Entertainment collaborates with the Official State Gazette State Agency on the preparation of the Sports Law Code

On November 2, 2015, Garrigues Sports & Entertainment signed an agreement with the Official State Gazette State Agency (AEBOE) for the preparation of the Sports Law Code.

Félix Plaza, partner in the tax department and co-director of Garrigues Sports & Entertainment, and Manuel Tuero, director of the AEBOE, signed that agreement. Since last year, Garrigues has been working with the AEBOE on creating a collection of electronic codes summarizing the provisions in force in different areas of Spanish law. On this occasion, our experts are working on the drawing up of the Sports Law Code which will be unveiled shortly.

Judgments and rulings

1. Madrid provincial appellate court judgment of June 2, 2015, on fault-based liability of a football club for injuries suffered during a match

The Madrid Provincial Court dismissed the appeal lodged by the club and its insurance company against the judgment of the Madrid Court of First Instance.

The matter at issue lay in determining the fault-based liability of the club for the injuries suffered by a fan (the respondent) at a football match when a group of "neo-fascists" who were in an adjacent sector burst into the sector where he was sitting, thereby causing several people to fall on him.

The court considered, contrary to the club's claims, that the club is liable for the damage caused to the respondent pursuant to article 1902 of the Civil Code. The court recalled how the tortious fault regime enshrined in that article has evolved in case law, and emphasized its evolution from the requirement for a subjective mental element of fault as such, to the acceptance of quasi-strict liability solutions, especially in areas of activity that imply the assumption of certain risks to be able to pursue them, such as planning and coordinating a sports event. However, the club's compliance with all of the regulatory measures does not preclude a finding of negligence and fault in its performance, especially in a sports event with these characteristics, which implies a higher than average standard of care on the organizer's part.

Lastly, the court considered that the insurance company was under the obligation to reimburse the respondent financially given that the events that gave rise to the damage—in this case, the respondent's injuries—fall within the cover provided by the liability insurance taken out by the club, since they constitute an "insured operating risk". Likewise, the court agreed with the indemnification set by the lower court and reminded the appellant insurance company that it was under the obligation to evidence its payment to the respondent so that the payment is not made late.

2. Supreme Court judgment of July 8, 2015, on the fine imposed for failure to fulfill information requests

The Judicial Review Chamber of the Supreme Court upheld the cassation appeal lodged by Audiovisual Sport, S.L. ("AS") against the National Appellate Court's judgment that had resolved on the lawfulness of the decision rendered by the Telecommunications Market Commission ("CMT") on December 12, 2008, imposing a fine on AS for its failure to fulfill information requests made by the CMT.

Based on the grounds for appeal submitted by the appellant, the chamber considered, on the one hand, that AS is an audiovisual service provider and, on the other, that the CMT has the necessary power to request the information and to impose a fine for the failure to furnish it. The chamber, however, found that there was no fault in AS's conduct, in the sense of trying to evade fulfilling its obligation, given that it informed the CMT several times and by filing submissions, that the information requested by the CMT was already in the possession of the Spanish Antitrust Authority. The CMT did not provide any reasons that justified the need to maintain the information request.

3. Galicia high court judgment of July 8, 2015, on a handball player's claim for wages

The Galicia High Court partially upheld the appeal filed by a handball player against Sociedad Deportiva Octavio Vigo, relating to a claim for earned but unpaid wages, as well for a severance payment stipulated in the employment contract as a penalty clause.

The court ruled that the inclusion in the employment contract of the clause on the amounts received by the player in respect of wages as "free of any tax or fiscal expense" does not mean that Sociedad Deportiva Octavio Vigo acquired the obligation to bear all of the worker's tax charges, since such a clause would be null and void in accordance with article 264 of the Workers' Statute. Accordingly, the obligation to withhold and prepay tax on behalf of the player is not backed by the employment contract. With respect to the enforceability of the penalty clause, the court held that the conditions required for it to accrue had been fulfilled, given

that the penalty clause, as reflected in the terms of the employment contract, is separate from and additional to the requirement to pay earned but unpaid wages.

4. Decision by Pamplona Examining Court No. 2 of July 9, 2015, on the keeping in force of injunctive measures involving attachment of the assets of the chairman of a football club

Pamplona Examining Court No. 2 rejected the appeal against the same court's decision of June 18, 2015, which had ordered the injunctive attachment of the appellant's assets to cover the appellant's liability for the alleged commission of several corporate offenses.

In the decision, the court considered that the existence of "incontrovertible or undeniable" indicia of the commission of several offenses by the appellant while in office as chairman of the board of directors of Club Atlético Osasuna, as well as of the chairman's subsequent attempt to rid himself of assets after resigning, justified the keeping in force the adopted injunctive measures.

5. Madrid provincial appellate court judgment of July 10, 2015, on the decision staying La Liga's injunctive measures against a football club

The Madrid Provincial Appellate Court upheld the appeal filed by La Liga and revoked the decision that had stayed La Liga's injunctive measures against a football club, relating to the refusal to issue the prior approval for the football association's license to a football player because the club had exceeded the limit on the cost of sports staff in the approved club budgets, thereby preventing him from lining up with the team.

This decision was based on the respondent's failure to show a prima facie case that the appellant's conduct had infringed the antitrust legislation, given that the measure taken by the appellant was, in the eyes of the court, proportionate and inherent with respect to the budgetary objective set for the teams by La Liga, which, although it did not have an express legal authorization in this respect, had the support of the budgetary requirements contained in the Insolvency Law.

6. Decision of the Central Judicial Review Court of July 21, 2015, on the lifting of the injunctive measure of relegation

The Central Judicial Review Court lifted the injunctive stay measure ordered by the same court for the purpose of staying the relegation of Elche CF, S.A. to Spain's second division as ordered by a decision of TAD, the Spanish administrative tribunal for sport, as a result of a breach of its tax obligations.

In this decision, the court recognized that there was no threat of imminent and irreparable harm (periculum in mora), since there was no reason why the enforcement of the TAD's decision and, therefore, the relegation place the club in any form of irreversible position. Likewise, the court considered that the relegation would not seriously affect any general or third-party interests, and recalled the need for all professional clubs to be up to date in the fulfillment of their sports and financial obligations, as necessary requirements for fair competition. Lastly, the court did not find the existence of a prima facie case, since TAD's decision is presumed to be valid and, therefore, except in cases of nullity as a matter of law, which was not the case here, this prerogative cannot be infringed by an early judgment on the merits of the case.

7. Supreme Court judgment of July 22, 2015, on the Champion League's invitation to tender

The Judicial Review Chamber of the Supreme Court dismissed the cassation appeal filed by Mediaset España, S.A. against the National Appellate Court's judgment backing the decision of April 1, 2011 of the Office of the Secretary of State for Telecommunications.

Mediaset España, S.A. maintained that RTVE's participation in the second tender for 18 matches of the European Champions League infringed the RTVE Funding Law and the General Audiovisual Media Law, because RTVE cannot use public revenues to bid for rights with a high commercial value, or exceed 10% of its budget to acquire such rights. Likewise, the appellant contended that RTVE had "overbid" in the tender, by submitting a bid much higher than those of its competitors in the second invitation to tender, with respect to an event that is not in the "greater general interest".

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The chamber concluded that RTVE had not exceeded the budgetary limit and had not overbid, thereby rejecting Mediaset España, S.A.'s claims.

8. Supreme Court judgment of July 23, 2015, on emotional damage due to an unlawful violation of a singer's honor and privacy

The Supreme Court dismissed the cassation appeal lodged by Mediaset España, S.A. against the Seville Provincial Appellate Court's judgment on the obligation of Mediaset España, S.A. to pay compensation for emotional damage due to an unlawful violation of a well-known singer's honor and privacy.

In the appeal, the court took a look at the legal commentary and case law on the right to information and its balance with the right to honor and privacy, concluding that the right to information reaches its limit at the truthfulness of the information and, above all, the public relevance of the fact disclosed. Therefore, a piece of true information may constitute an unlawful violation of privacy where it violates a person's private and personal realm. Following this line of argument, the court recalled that it is also necessary, when determining this balance, to take into account the person's patterns of behavior and the degree to which he or she guards and protects his or her private life.

Based on all of the above, the court concluded that the information revealed on the Telecinco channel, owned by the appellant, relating to the respondent's sexuality and to a possible assault committed by the respondent in 1999, are not protected by the right to information, since the information is not true, has no public relevance in relation to the respondent's public and artistic life and is clearly offensive in nature. Likewise, the court confirmed the Provincial Appellate Court's decision regarding the quantification of the emotional damage, highlighting that its reasoning, in the absence of numerical data on the channel's profits, must be based on the factual circumstances surrounding the act.

9. Madrid provincial appellate court judgment of July 24, 2015, on the order to pay remuneration for the launch of a music downloading service

The Madrid Provincial Appellate Court rejected the appeal filed by Xfera Moviles, S.A. against Artistas e Intérpretes o Ejecutantes, SGE ("AIE"), regarding the order to the former to pay the latter the remuneration provided for in article 108.3 of the Revised Intellectual Property Law, as a result of the launch by the former of a music downloading service.

The Provincial Appellate Court ruled that, on the one hand, Xfera Moviles, S.A. is under the obligation, without having to be a co-defendant with the hosting company, to pay the remuneration since it does not simply provide a linking service between its customers and the Web where they download the content, but rather directly offers the content to its customers and handles the entire acquisition process for them. On the other hand, the court considered that the rates set by AIE are fair in accordance with the EU mandate contained in Directive 92/100 and in the Spanish case law. In this respect, it considered that the manner in which the amounts collected from these rates is shared among performers cannot be a factor in the evaluation of such fairness. Lastly, with respect to the inclusion in AIE's rates of fees that relate to foreign performers, the court concluded, based on the international agreements signed by Spain and the US and on the domestic legislation, that AIE has sufficient standing to manage and collect them.

10. Treasury and Finance Department of the Basque Country, Decision of July 30, 2015, on whether the licensing of image rights in a commercial transaction with a UK company is subject to VAT

In response to a ruling request submitted by a limited liability company resident in Guipúzcoa that manages the image rights of a professional athlete, on whether a commercial transaction with a company established in the United Kingdom is subject to VAT, as well as on possible unique items to be considered in the invoice, the Treasury and Finance Department considered that, for this specific supply of services—licensing of image rights or intermediation in a transaction to license them—the services must be deemed supplied in the territory of the recipient's place of business, since they constitute an intra-Community supply of services.

As regards the possible unique items on the invoice to be issued, given that the recipient will be the taxable person in this case, a reference to the "reverse charge mechanism" must be included on the invoice.

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

The Civil Law Chamber of the Supreme Court dismissed the cassation and extraordinary appeals for procedural infringement lodged by a number of participants in a television show, against the judgment given on appeal by the Madrid Provincial Appellate Court.

The Supreme Court thus confirmed the appellants' obligation to indemnify the respondent as a result of an unlawful violation by the former of the latter's right to honor and right of personal portrayal. Likewise, the Court recalled that, although the right to freedom of expression protects even the "harshest" criticism, especially in the case of well-known or public people, this fundamental right reaches its limit in the giving of slanderous and unnecessary opinions or assessments as an element of criticism. The simple grave insults proffered by the appellants against the respondent, with the clear aim of offending and slandering, therefore constitute an infringement of the right to honor and privacy and the right of personal portrayal.

12. DGT binding ruling V1470-15, of May 12, 2015, on withholding tax on income from the licensing of an actress's image rights

The withholding tax rate for income from the licensing of the image rights of an actress and professional model is 24% and is applied to the gross income paid by the payer, in accordance with article 101.1 of the Personal Income Tax Regulations.

13. DGT binding ruling V1591-15, of May 26, 2015, on withholding tax on income received by sports association referees

The income received by referees for the various sports associations for performing their tasks in the competitions organized by them is treated as salary income for personal income tax purposes. Consequently, the withholding rate applying to this income will be determined according to the general procedure set out in article 82 of the Personal Income Tax Regulations.

14. DGT binding ruling V1647-15, of May 27, 2015, on income received by a chess arbiter

The compensation received by a chess arbiter in both official (organized by the Spanish Federation and/or autonomous community federations) and private tournaments (organized by associations, clubs or private companies) must be treated as salary income for personal income tax purposes, given that neither activity involves the organization for their one account of the means of production and/or human resources.

15. DGT binding ruling V2077-15, of July 3, 2015, on whether contributions by a salaried journalist are subject to VAT

Contributions by a salaried journalist as an independent contributor to print and other media outlets (radio and television) are treated as different sectors of business for VAT purposes. On the one hand, the contribution services to print media outlets are exempt from VAT in accordance with article 20.26 of the VAT Law; on the other hand, the contribution services to media outlets other than print media outlets are not exempt from VAT.

16. DGT binding ruling V2124-15, of July 10, 2015, on whether the activity of building a public golf school is subject to VAT

The activity of building and delivering a public golf school to a public authority by a commercial company in the public sector is subject to VAT, given that the company does not have public authority status for the purposes of article 7.8 of the VAT Law, nor does it qualify as a nontaxable service supplied in response to a commission from public sector entities, since this applies only to supplies of services, not of goods (in this case, the DGT considered, in accordance with article 82, that the building activity carried on by the commercial company was a supply of goods, because it involved building a structure and the company provided all of the materials required to build it).

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17. DGT binding ruling V2354-15, of July 24, 2015, on the ability to deduct a prize awarded by a publisher/individual

A prize awarded by a publisher (an individual) subject to personal income tax on income from economic activities under the direct assessment system, to a writer in a literary contest is treated as a deductible expense when determining the net income from the publisher's economic activity, since the expense must be treated as having arisen in the course of his activity.

18. DGT ruling V2533-15, of September 3, on the personal income tax treatment of income obtained by a disc jockey

Work performed as a disc jockey at events, weddings, first communions, birthdays, bachelor parties, etc. as well as at nightclubs, discos and pubs, is subject to the tax on economic activities, and requires registration under group 039 of section three of the rates which classifies "Other music-related activities, not classified elsewhere".

The income obtained by the requesting taxpayer for the activity described must be classified for personal income tax purposes as income from economic activities, since the activity pursued falls within the activities included in section three of the rates of the tax on economic activities.

As it is a professional activity, the income obtained will be subject to withholding tax in accordance with article 95.1 of the Personal Income Tax Regulations.

19. DGT ruling V2620-15, of September 8, 2015, on the VAT treatment of athlete registrations in a sports club's competitions

The requesting taxpayer is a nonprofit sports club which says that it meets the requirements of article 20.Three of the VAT Law to be considered an entity of a social nature. It organizes amateur athletic competitions (fun runs) without cash prizes and the registration fee mainly serves to cover the costs of managing the competition. The sponsors contribute the gifts or provisions for the event.

The services for organizing fun runs are provided to the participating runner by a sports entity which may be considered as a private entity or establishment of a social nature. Consequently, it will qualify for the exemption contained in article 20.One.13 of the VAT Law provided that the article's other requirements are met.

The exemption will only apply to the activities engaged in by the requesting entity which are considered supplies of services (not supplies of goods) and they must be directly related to the pursuit of the sport or the physical education of an individual.

If the requesting entity does not satisfy the conditions to be considered a sports entity or establishment of a social nature, the rate applicable to the activities it pursues will be the standard tax rate.

20. DGT ruling V2829-15, of September 29, on the place of supply, for VAT purpose, of the use of advertising spaces by an entity resident in a third country

The requesting entity has entered into an advertising sponsorship and advertising agreement with an entity resident in a third country which supplies telecommunications services in Asia and the Middle East. Under the agreement, the telecommunications company will be entitled to use the advertising spaces of the sports stadium of the requesting entity in the Spanish VAT territory, although it does not supply telecommunications services in that territory.

In accordance with article 69.One.1 of the VAT Law, services supplied which consist of the grant of the right to use advertising spaces of a sports stadium to an entity that supplies telecommunications services established in a third country are not considered supplied in that territory and, therefore, are not subject to VAT. However, article 70.Two establishes a taxation criterion based on the effective use and enjoyment of certain services for which the place-of-supply rules would determine that the services are nontaxable.

To apply the effective use and enjoyment rule, the service must be used by the recipient (i.e., the requesting party) when making the supplies in the Spanish VAT territory. Accordingly, if the services that the requesting party's client is going to supply are deemed supplied in the Spanish VAT territory, the rule contained in article 70.Two would apply.

In this case, the entity established in a third country, a telecommunications company, does not supply services in the Spanish VAT territory, so the rule contained in article 70.Two will not apply.

NEW LEGISLATION

1. Decision of June 30, 2015, of the Office of the Secretary of State for Culture, granting aid, under competitive competitions, for nonprofit entities that promote and strengthen the publishing industry

The Office of the Secretary of State for Culture has earmarked a total of €395,000, out of budget item 18.13.481.19, for subsidies for 21 nonprofit entities that promote and strengthen the publishing industry, with respect to certain projects submitted by applicant entities related to the world of culture and the promotion of reading.

2. Royal Decree 950/2015, of October 23, 2015, setting up the Center for Sports Education

The Spanish government has set up the Center for Sports Education (CESED), which is attached to the National Sports Council and has as its purpose not only to flesh out and coordinate the offering of advanced sports education programs, but also to serve as a tool to support the implementation and development of sports education through all of its phases: creation of materials adapted to remote training, transitional period training, accreditation of professional competencies not referred to in the National Catalog of Professional Qualifications, informal training, and pedagogical and didactic training of advanced sports techniques.


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