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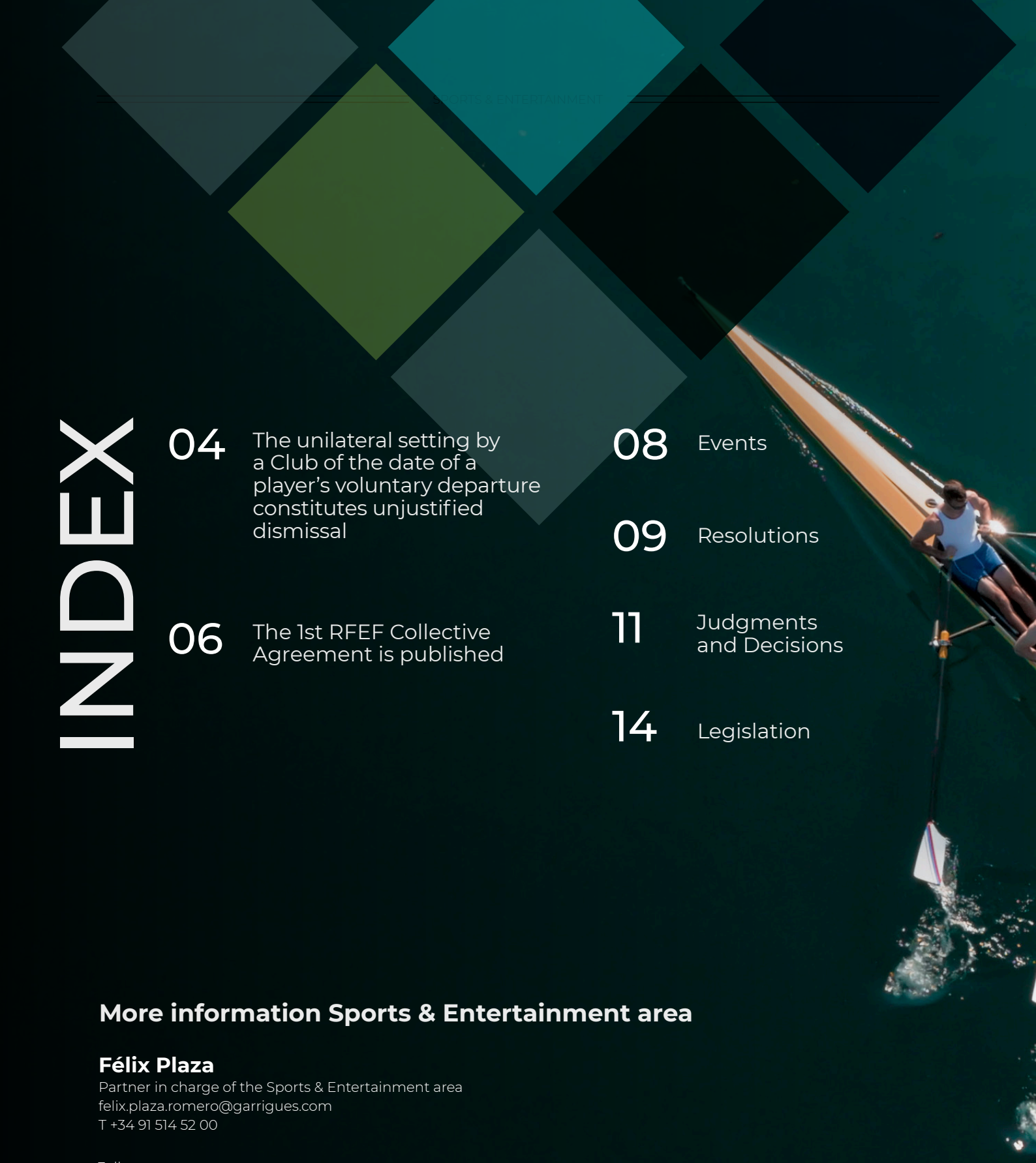

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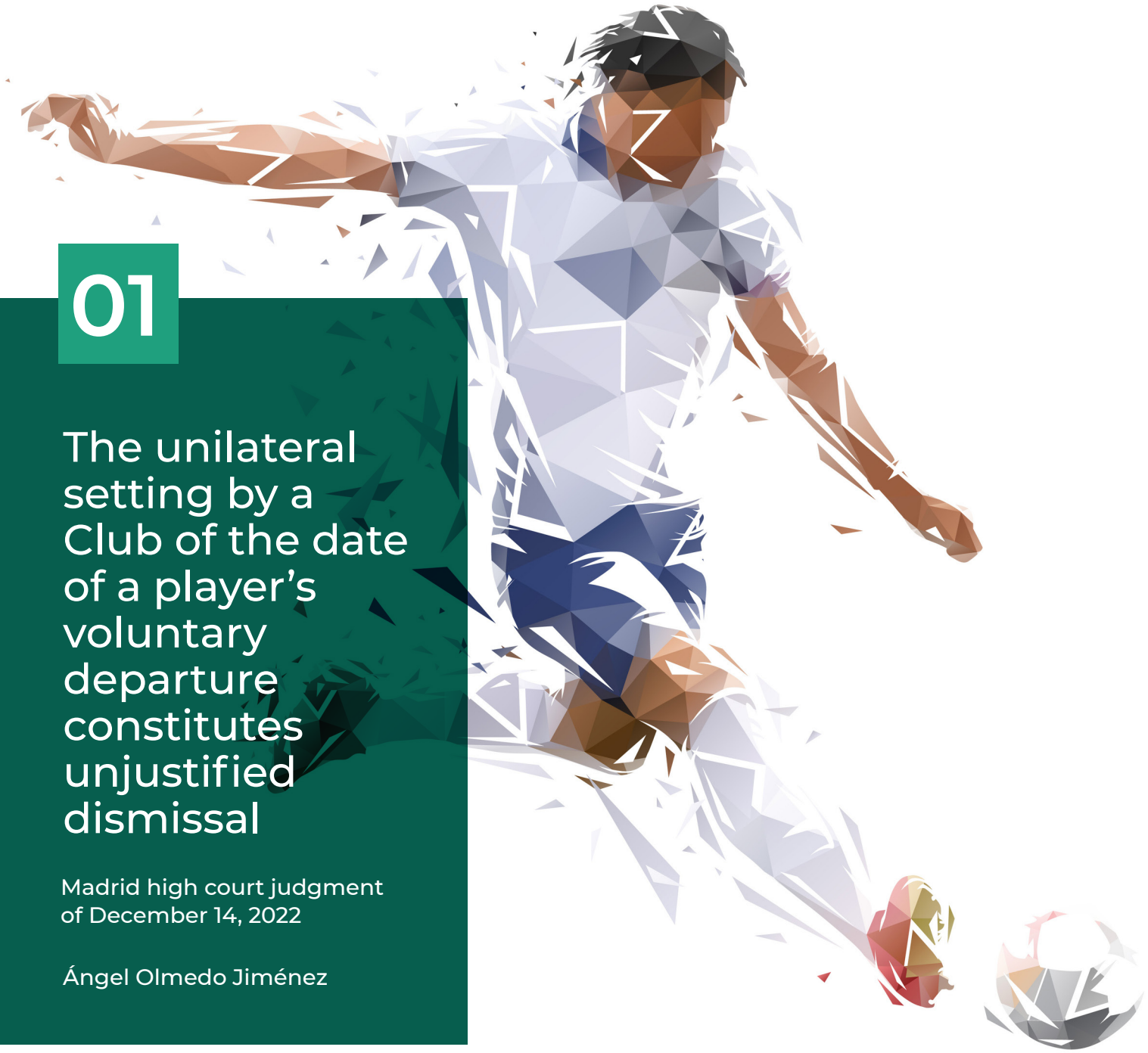

01

The unilateral setting by a Club of the date of a player's voluntary departure constitutes unjustified dismissal

Madrid high court judgment of December 14, 2022

Ángel Olmedo Jiménez

The setting by the employer, unilaterally, of the date on which the player's employment contract was to be terminated due to voluntary departure, stipulating an earlier date than was envisaged in the employment contract, is viewed as an unjustified dismissal.

Issue in dispute and facts of interest

The Club and the player signed a contract for a term of two seasons (from August 1, 2019 through to July 31, 2021).

They subsequently signed a contractual novation agreement extending the term of the contract from August 1, 2021 through to July 31, 2023.

This agreement also contained a termination clause which enabled either party to terminate the contract for the 2022/2023 season,

provided that they communicated this to the other party between December 1 and 15, 2021.

On December 1, 2021, the player informed the Club, as required by that clause, of his wish to terminate the contract for the 2022/2023 season.

The Club deregistered the player for social security purposes on July 19, 2022 and issued a document acknowledging a debt in the player's favor, recognizing that he had provided his services through to July 31, 2022.

The player, who signed a contract with another club for the 2022/2023 season, filed a claim on the understanding the company's actions amounted to unjustified dismissal and claimed the corresponding compensation, which had not been stipulated in the contract.

La Coruña Labor Law Court no 5 dismissed the claim and the player appealed against this decision.

Judicial interpretation

The Galician High Court revoked the lower court's ruling, finding that the employer's conduct amounted to dismissal and that such dismissal could only be classed as unjustified.

The reasoning behind this conclusion was as follows:

a) The player terminated the employment contract in accordance with the provisions of the termination clause it contained, according to which either party could, within the stipulated period, communicate their wish to terminate it.

   That request for voluntary termination of the contract related, according to the provisions of the contract itself, to the 2022/2023 season, and was therefore dated July 31, 2022.

b) The Club itself recognized, by signing the acknowledgment of debt, that the player had provided his services through to July 31, 2022.

c) The fact that the employer deregistered the player for social security purposes on July 19, 2022 amounted, in practice, to a tacit dismissal which can only be classed as unjustified.

d) The court, in its judgment, considered the minimum compensation for unjustified dismissal stipulated by law (60 days' salary per year of service) to be adequate, since the player had not alleged any special circumstances on the basis of which that amount could be increased.

   Furthermore, the amount of the compensation far exceeded the player's wages for the period elapsing between the tacit dismissal (July 19, 2022) and the date on which the contract would have been terminated (July 31, 2022).

The Galician High Court revoked the lower court's ruling, finding that the employer's conduct amounted to dismissal and that such dismissal could only be classed as unjustified.

02

The 1st RFEF Collective Agreement is published

Ángel Olmedo Jiménez

The Collective Agreement for professional football applicable in the third tier of the Spanish football system (currently 1st RFEF) was published on May 3, 2024.

The key aspects of the agreed text are as follows:

a) It will apply to players with a professional athlete's contract who play on teams which compete in 1st RFEF, as well as to players forming part of dependent or subsidiary teams of the above who (i) are called up to play in at least 12 matches during the season, or (ii) play 10 matches.

b) It is intended to remain in force through to the end of the 2025/2026 season (i.e. June 30, 2026), with the possibility of its being extended by one season unless notice is served of its termination more than 3 months before the end of the agreed term. If notice is served of the termination of the Agreement, it will remain in a situation of automatic extension pending renewal until a new one comes into force. The provisions of the Agreement stipulate that

throughout both periods (extension and automatic extension pending renewal), remuneration will be reviewed annually in line with the CPI (if the CPI is negative, the review will be equal to 0).

c) It is also stipulated that, in the event of this tier being restructured and, as a result, of the number of participating teams being increased by more than 30%, the Agreement will cease to be valid on the last day of the season preceding that in which the modification is to take effect.

d) Working hours may not exceed 7 a day, nor 35 hours a week.

e) In drawing up the match schedule, there must be a 72-hour rest period between matches, with no matches taking place between December 23 and January 2.

f) Holidays are set at 30 days, of which 21 days are to be taken continuously. Holidays may not be replaced by financial compensation, unless, for reasons relating to the match schedule, they cannot be taken in full within the term of the contract.

g) The trial period may not exceed 15 days, although this is reduced based on the number of days remaining through to the end of the transfer window at the point at which the contract is signed.

h) The minimum guaranteed salary will be €20,000 for the 2024/2025 season, and €25,000 for the season after that (subject to an increase in line with the CPI if the Club's revenues reach €500,000).

i) Compensation for death or an injury that renders the player unfit for any work-related activity, occurring as a result of their football activity, is set at €40,000 (in cases of death) and €10,000 (in the event of total or absolute permanent incapacity).

j) The Clubs undertake to (i) encourage and facilitate the comprehensive training of the footballers insofar as is compatible with the sporting activity, facilitating the completion of their studies or obtaining of professional qualifications and granting them leave where necessary in order to sit examinations or tests; and (ii) use their best endeavors to develop a program for the placement of footballers once their sporting careers have come to an end.

k) There is a protocol for the election of workers' representatives on the Negotiating Committee for the negotiation of the Collective Agreement, and an abbreviated procedure is envisaged for the early termination of contracts (in cases of non-payment of salaries by the Club) which is incompatible with the termination action envisaged in article 50 of the Workers' Statute (it being stipulated that a judicial proceeding must prevail over the proceeding regulated in the Collective Agreement unless a final decision has already been reached by the Joint Committee defined in the Agreement).

The Collective Agreement for professional football applicable in the third tier of the Spanish football system (currently 1st RFEF) was published on May 3, 2024.

EVENTS

The Taxation of Football in Spain: controversial issues and competitiveness

On February 8, 2024, FIDE organized a forum that brought together a number of experts, including Félix Plaza, partner and co-director of Garrigues Sports & Entertainment, to discuss the taxation of football in Spain, with special emphasis being placed on the most controversial issues affecting the sector and the competitiveness of the Spanish tax system in the world of football. This forum was also attended by Marta Sol Cobo, Head of Tax at LaLiga and Antonio Puentes Moreno, Partner in the tax litigation department of BDO España.

Workshop at the Ortega-Marañón Foundation along with the Spanish Confederation of Business Organizations (CEOE): improving the culture industry.

Félix Plaza, partner and co-director of Garrigues Sports & Entertainment, took part last February in the workshop organized by the Ortega-Marañón Foundation along with the Spanish Confederation of Business Organizations (CEOE). The participants discussed different questions regarding ways of improving the culture industry. Félix Plaza suggested possible measures to improve the Patronage Law.

First Roundtable at the Spanish Royal Academy of Jurisprudence and Legislation discussing about Sports law

On February 1, 2024, the Spanish Royal Academy of Jurisprudence and Legislation held a roundtable entitled "Outlook for the future in the regulation of the EU sport model in light of recent CJEU case law"; this was the first event held by this institution to discuss matters of sports law. Félix Plaza, partner and co-director of Garrigues Sports & Entertainment, gave his views on tax-related measures which need to be implemented to make LaLiga more competitive.

Conference on Challenges and outlook for the future of professional sport in Europe following recent CJEU case law (the Superleague case and others)

This conference, entitled Challenges and outlook for the future of professional sport in Europe following recent CJEU case law was held on April 23, 2024; in which Félix Plaza, partner of Garrigues, took part in it.

36th Gigantes Awards Ceremony

The 36th edition of the Gigantes Awards took place on February 12, 2024; our partner Félix Plaza presented the award for best sports director of the year to Willy Villar, a sports director with extensive experience in a large number of ACB league clubs and currently the sports director of Gran Canaria Basketball Club.

Resolutions

Expenses incurred within the framework of a business partnership agreement become deductible as and when the amounts to which the party concerned has committed itself are paid.

DGT resolution V1560-23 of June 6, 2023

The requesting entity has entered into a business partnership agreement with a private, not-for-profit foundation for the development of a project related to the aims and purpose of the foundation. In return for financial support provided by the requesting entity, the foundation undertook in writing to publicize, on any medium, the entity's participation in that project. The agreement covers a period of several years and envisages successive payments to be made over its term. The entity asked whether the total amount of the financial support would be understood to accrue for accounting purposes at the point of the initial signing of the Agreement, and when it would become deductible for tax purposes.

On the accounting treatment of the expense, the DGT mentioned resolution number 5 in Spanish Accounting and Audit Institute Gazette (BOICAC) no 90, which stipulates that it must be recognized in the year in which the requesting entity has undertaken to make the payment pursuant to the terms of the agreement. On the tax treatment, the DGT concluded that, since the support is still free of charge, it will initially be treated as a non-deductible expense and will become deductible for tax purposes as and when the amounts provided for in the agreement are paid.

The withholding tax applicable to income from the licensing of image rights, however it is classed, is 24%.

DGT resolution V1981-23 of July 7, 2023

The requesting party asked about the withholding tax rate applicable to the income relating to the licensing of image rights by persons who appear in advertisements within the framework of an express employment relationship.

The DGT affirmed that income from the licensing of image rights is classed as income from movable capital, unless the licensing takes place within the scope of an economic activity, in which case it would be classed as income from economic activities. Regardless of how it is classed, the rate at which tax must be withheld and prepayments made is 24%.

Issue submitted on whether fees paid by participants in a sporting competition and winnings paid are subject to VAT and to personal income tax and nonresident income tax withholdings

Resolution V2112-23 of July 19, 2023

The requesting company is going to organize athletics competitions in Costa Rica and Iceland in which amateur and professional runners from Spain and other countries will take part and will be charged a fee. These fees will be used to cover the costs of organizing the event and to pay the prizes, the rest being kept by the company. It was asked whether they are subject to VAT and to personal income tax and nonresident income tax withholdings.

On VAT, the DGT stated that the service consisting of the organization of sports competitions - the consideration for which is the enrollment fee - is not subject to VAT because the competitions are to be held outside the Spanish VAT area. On the other hand, insofar as the recipient of the service (the requesting entity) is established in the Spanish VAT area, the amount of the cash prizes is subject to and not exempt from VAT provided that the runner is classed as a trader or professional.

As regards the applicable withholding tax rate, prizes received by runners not resident in Spain are not regarded as having been obtained in Spain and, consequently, are not subject to nonresident income tax. Resident runners, on the other hand, will be taxable in Spain on their worldwide income, including prizes in kind. From the perspective of the requesting entity, the prizes are classed as income from professional activities and tax must be withheld on them, generally at a rate of 15%.

Issue submitted on the taxation of income obtained by an actor in the making of an advertisement

Resolution V3030-23 of November 21, 2023

The requesting party is an actor who works for an employer. He asked about the treatment applicable to income received for work performed in the making of an advertisement, as well as income from the licensing of image rights.

The DGT affirmed that the income received, given that it constitutes remuneration for acting in the making of an audiovisual advertisement, is classed as earned income for personal income tax purposes, due to the special employment relationship between the actor and the production company. On the other hand, it pointed out that income from the licensing of image rights can be classed in two ways: as income from economic activities or income from movable capital, depending on whether or not the licensing takes place in the context of an economic activity.

Compensation for total incapacity received by a footballer is classed as notably multi-year earned income

Resolution V2117-23 of July 19, 2023

The requesting party is a professional footballer who receives two compensation payments from his club as the result of an injury that left him with total permanent incapacity. The issue submitted for resolution was how this income should be treated for personal income tax purposes.

The DGT noted that the compensation received by the player is not compensation for loss or injury caused by a third party nor deriving from an accident insurance policy and that it is therefore not covered by the exemption provided for in article 7(d) of the Personal Income Tax Law. Neither is it compensation for termination or dismissal of the worker. The compensation payments are therefore to

be classed as notably multi-year earned income, to which the reduction envisaged in article 18.2 of the Personal Income Tax Law is applicable.

Issue submitted on the treatment applicable for VAT and personal income purposes of income obtained under a corporate sponsorship arrangement

Resolution V2990-23 of November 14, 2023

A company is interested in sponsoring an equestrian show jumper who is a minor. It submitted an issue for resolution on the applicable treatment for VAT and personal income tax purposes.

Regarding VAT, the DGT explained that the show jumper, despite being a minor, provides a service to the sponsor company, consisting of a licensing of the right to use her image as an athlete. The licensing of rights is therefore subject to VAT and she must charge the company to which the service is rendered the applicable VAT on each payment received, at the standard rate of 21%. As a taxable person, she is entitled to deduct input VAT on purchases of goods and services in the conduct of her professional activity.

As far as personal income tax is concerned, the income obtained is classed as income from professional activities if it involves the organization on her own behalf of means of production and human resources for the purpose of participating in the production or distribution of goods or services. If there is no such organization, the amount of financial sponsorship is classed as a capital gain.

A regional boxing federation is not under obligation to issue an invoice for exempt transactions where the recipients are not traders or professionals

Resolutions V2156-23 and V2178-23 of July 21, 2023 and July 25, 2023

A boxing club is affiliated to the regional federation of an autonomous community. The club makes payments for, among other items, affiliation to the federation, the organization of sporting events and the boxers' federation licenses. It submitted an issue for resolution concerning whether the regional federation is under obligation to issue invoices for the transactions in question.

The DGT replied that the club and the federation are classed as traders or professionals and, consequently, that any supplies of goods and services that they make in the Spanish VAT area in the conduct of their business or professional activity are subject to VAT. However, transactions carried out by the federation could be exempt from VAT under article 20.One.12 of the VAT Law, provided that it does not receive any consideration other than the fees stipulated in its statutes. Supplies of services could also be exempt from VAT under article 20.1.13 of the VAT Law provided that they are directly related to the practice of sport.

There would therefore be no obligation to issue invoices for exempt transactions where the recipients are not traders or professionals acting in their capacity as such.

Analysis of whether the compulsory initial contribution made by clubs to participate in the professional league is subject to VAT

Resolution V0107-24 of February 15, 2024

A non-profit sports association organizes the first division professional league of a particular sport. The clubs make a compulsory initial contribution to be able to compete. The issue concerned whether the payment of the access fee is subject to VAT.

The DGT replied that the requesting association will be classed as a trader or professional where it organizes a combination of human and material resources in order to carry out an activity through the supply of goods or services on an ongoing basis, bearing the risk that such activity entails, provided that it is undertaken for consideration. In such circumstances, the supplies of goods or services are subject to VAT.

However, the transactions carried out by the association could be exempt from VAT under article 20.One.12 of the VAT Law, provided that it does not receive any consideration other than the fees stipulated in its statutes. The DGT's understanding is that this does not include transactions carried out by the association for its members, for which it charges them a separate price, the purpose of which is to satisfy the particular interests of the recipient members.

For donations made by individuals to a sports grouping to be deductible for personal income tax purposes, the entity receiving the donation must meet certain requirements

Resolution V0344-24 of March 12, 2024

It was asked whether donations made by individuals to a sports grouping can be deducted for personal income tax purposes.

The DGT replied that personal income tax legislation envisages two different systems for the deduction of donations. For the individual to be entitled to apply the deduction for donations, the entity to which the donation is made must be one of the following:

- An entity regulated by Law 49/2002 of December 23, 2002 on the tax regime for not-for-profit entities and on tax incentives for patronage.
- An entity other than those mentioned above that is either a legally recognized foundation accountable to a foundations commission, or an association granted public benefit status

The DGT concluded, however, that it had not received sufficient information to be able to determine whether the sports grouping meets the requirements indicated and, as a result, whether the individual is entitled to apply the deduction.

Referees are not classed as professional or high-level athletes for the purposes of making contributions to the fixed-premium welfare mutual insurance society for professional athletes and applying the corresponding reduction

DGT resolution V0349-24 of March 12, 2024

The requesting party is a professional referee belonging to a sports federation who has been named by his autonomous community as a high-level referee. He asked whether he can apply additional provision eleven of the Personal Income Tax Law, which regulates contributions to the welfare mutual insurance society for professional athletes and envisages a reduction to the general component of taxable income for personal income tax purposes.

In order to answer this question, the DGT requested a report from the National Sports Council to determine whether referees are classed as professional athletes or high-level athletes, as required by additional provision eleven of the Personal Income Tax Law. The report concluded that professional referees do not fall within the scope of application of Royal Decree 1006/1984, on the employment relationship of professional athletes, nor that of Royal Decree 971/2007 on high-level and high-performance athletes. The report therefore concludes that referees are not classed as professional or high-level athletes.

The DGT's conclusion is therefore that referees cannot make contributions to the welfare mutual insurance society for professional athletes, nor apply the corresponding reduction to their taxable income.

Judgments and Decisions

TEAC analyses the criteria to be considered when determining the tax residence of professional racing drivers

Central economic-administrative tribunal decision of April 25, 2023

TEAC was deciding on economic-administrative claims filed by a professional racing driver against the assessment and penalty decisions resulting from a tax audit. The Regional Financial and Tax Inspection Bureau of the Catalan Special Tax Office adjusted the taxpayer's personal income tax and wealth tax returns for the years 2014 through to 2017 on the understanding that, in those years, he was resident for tax purposes in Spain.

In relation to article 9.1 of the Personal Income Tax Law, TEAC pointed out that the calculation of the number of days that the taxpayer has remained in Spanish territory must be based on objective criteria. It therefore rejected the argument that a transitory presence in Spain for circumstantial reasons should not be counted as a day spent in this country. As a result, TEAC confirmed the conclusion reached by the auditors regarding 2014 and 2015, since it had been proven that the taxpayer had spent more than 183 days in Spanish territory. Regarding 2016, TEAC confirmed the view formed by the auditors, concluding that the taxpayer's center of economic interests was in Spain, since it had been demonstrated that it was from this country that his business activities were managed.

In relation to 2017, however, it found that the evidence provided by the auditors was not sufficient to establish that the taxpayer had been resident for tax purposes in Spain. In particular, TEAC affirmed that the determination of a racing driver's residence based on the imputation of income according to where the championships took place has serious limitations; and it expressed the view that it would be more coherent to analyze other types of income, such as the location of the wealth accumulated by the racing driver over the course of his sporting career. Accordingly, the TEAC partially upheld the claim and set aside the assessment for 2017 and the corresponding penalty.

The insults directed at a referee on social media constitute an infringement of his right to honor

Supreme court judgment of December 21, 2023

The Supreme Court dismissed the cassation appeal filed against the judgment of the Provincial Appellate Court of Las Palmas de Gran Canaria which declared that there had been an unlawful breach of the right to honor of a referee at whom insults were directed on social media after he suspended a children's handball match. The cassation appeal was lodged by the defendants, who argued that their right to freedom of expression had been breached.

The Supreme Court affirmed that honor is a fundamental right intrinsically linked to personal dignity and that it constitutes a universal attribute. That right provides protection against attacks on a person's reputation and prevents the dissemination of insulting expressions or messages which result in defamation. In this case, the Supreme Court pointed out that the appellants did not merely criticize the suspension of the match, but discredited the referee both personally and professionally. It concluded that the discrediting had been disproportionate given the meaning of the words used and the absence of any link to the conduct of the referee in their capacity as such.

The Supreme Court therefore dismissed the cassation appeal, considering that the appellants had gone far beyond the boundaries of freedom of expression and had violated the referee's honor and their dignity as a person. It also pointed out that it is not necessary to give the name and surnames of the person at whom the insults are directed for that person to be identifiable. The person in question had been personally identifiable because it was mentioned that he had refereed a specific match and that he was a member of the local police force.

TEAC examines whether income derived from an artistic performance is taxable in Spaina

Central economic-administrative tribunal decision of October 30, 2023

TEAC decided the economic-administrative claims filed by an entity against adjustments made the National Tax Management Office. The adjustments were based on the failure to withhold tax on income that the entity had paid for live performances by nonresident artists at events it had organi-

zed. The entity's view was that the payments were made to companies that carried out management, sales and services tasks, and therefore did not derive solely from the artist's performances in Spanish territory.

TEAC examined whether or not the income obtained by the nonresident entity is taxable in Spain and concluded that under both domestic legislation and the tax treaty signed by Spain and the United Kingdom, the taxation in Spain of income derived from an artistic performance is possible, even where it is paid to a person other than the artist. Not all income, however, can be classed as "artistic income", and a distinction must be drawn between income constituting remuneration for the performance as such and other "ancillary" income (e.g. production of the show).

In this case, TEAC took the view that the claimant had failed to provide sufficient evidence to demonstrate that part of the amount paid related to services ancillary to the performance. Consequently, it dismissed the claim and upheld the contested decisions.

If the 85/15 rule is met, transfer pricing rules do not have to be applied to a licensing of image rights by a footballer to an entity of which they are a shareholder

National appellate court judgment of October 3 and 25 2023

The National Appellate Court upheld the appeals for judicial review filed by two footballers against TEAC rulings of May 14, 2018 and October 1, 2018. In its decisions, TEAC confirmed the interpretation supported by the tax authorities, which was that the licensing of image rights to the company of which the footballer is a shareholder is a related-party transaction and that, for this reason, the income must be measured on an arm's length basis and included as income from movable capital in taxable income for personal income tax purposes.

The National Appellate Court applied the 85/15 rule set out in article 92 of the Personal Income Tax Law, according to which all income paid by the employer which derives from the licensing of image rights is taxable at the company if it is equal to or less than 15% of the total income paid by the employer, as was the case here.

Consequently, the National Appellate Court concluded that in cases in which it is not appropriate to include the income in the taxpayer's taxable income for personal income tax purposes because the requirements of the 85/15 rule are met, the rules on related-party transactions cannot be applied to the licensing of image rights between the footballers and the companies of which they are shareholders.

The FIFA and UEFA rules which state that any plans for new competitions between football clubs require prior authorization by them breach European Union law

CJEU judgment of December 21, 2023

The CJEU ruled on questions referred for a preliminary ruling by Commercial Law Court No. 17 for Madrid regarding the compatibility with European Union law of certain provisions of the FIFA and UEFA statutes. According to their statutes, FIFA and UEFA have the power to authorize the holding of international football competitions. Following the announcement of the creation of the Superleague by the European Superleague Company ('ESLC'), FIFA and UEFA issued a joint statement announcing their refusal to recognize this new competition and warning that any club or player participating in it would be excluded from the competitions organized by them. This led to ESLC filing a claim with Commercial Law Court No. 17 for Madrid asking that such announcements be declared unlawful and harmful.

The position adopted by the CJEU was that, under competition law, FIFA and UEFA must be classed as businesses, since they engage in economic activities such as the organization and marketing of football competitions and the exploitation of rights deriving from those competitions. Such activities must therefore observe the rules on competition and free movement. In this regard, the CJEU indicated that when a business in a dominant position has the power to determine the conditions in which competing undertakings may enter the market, such power must be accompanied by the criteria necessary to ensure that it is exercised in a manner which is transparent, objective, non-discriminatory and proportionate. Otherwise, as in this case, such actions will constitute an abuse of dominant position.

The CJEU also concluded that the FIFA and UEFA rules constitute an obstacle to the freedom to provide services, since they enable these entities to control at their discretion the possibility of any business organizing and marketing football competitions in European Union territory. Furthermore, it noted that the absence of objective and non-discriminatory criteria of which there is prior knowledge means that it cannot be concluded that there is a legitimate objective in terms of public interest that justifies the adoption of such rules.

The exemption applicable to income below €10,000 received by artists does not mean that the payer is exempt from the obligation to withhold tax

TEAC decision of November 28, 2023

TEAC decided an economic-administrative claim filed by an individual based on the understanding that he was not under obligation to withhold tax on payments he had made to an artist - resident in the United States - because such payments did not exceed €10,000.

In its decision, TEAC analyzed article 19 of the tax treaty signed by Spain and the United States and its protocol. The tax treaty establishes an exemption whereby income of less than €10,000 obtained by an artist is not taxable. The protocol, on the other hand, provides that this exemption does not preclude the application of taxation at source in accordance with domestic law and that the exemption is to be applied through the refunding of excess tax withheld.

TEAC concluded that the payer of the income should have made the corresponding withholdings, since the exemption must be obtained by the artist through a request for a refund of withholding tax borne. TEAC therefore rejected the economic-administrative claim.

Analysis of the protection afforded to the famous mark of a well-known football club

Supreme court judgment of November 07, 2023

The Supreme Court upheld the cassation appeal filed by a well-known football club against the judgment of the Madrid High Court which had found that there was no word, phonetic or graphic similarity between the football club's mark and the mark whose registration had been requested, although there was a similarity in the areas of application they were intended to protect: sports and cultural activities services.

In the judgment, the Supreme Court examined whether the requirements are met for the protection of well-known marks to be applicable, for which there must be a certain similarity between the signs and an unfair advantage clearly taken from the reputation built up by the prior mark, which may be harmed as a result. In this regard, it affirmed that it is sufficient for there to be a similarity which poses a risk of association or link between them and which leads the average consumer to believe that the two products are related, as a result of which advantage is taken of the prestige and reputation earned by the well-known mark.

The Supreme Court concluded that there is no doubt that the well-known football club's mark enjoys a well-established international reputation. In this case, the marks had a common and characteristic element consisting of the city from which they originated, as well as a reference to their being a 'Football Club'. The conclusion was therefore reached that the mark applied for was incompatible with the mark of the well-known football club and the appeal lodged by the latter was upheld.

Income obtained by a nonresident motorcycle racer in respect of races in which he did not take part due to injury is not taxable in Spain

Catalan regional economic-administrative tribunal (TEAR) decision of July 12, 2023

TEAC decided the economic-administrative claims filed by a non-Spanish resident motorcycle racer against assessment and penalty decisions issued by the tax authorities. Among other points, the claimant considered unlawful the adjustment of income obtained in respect of several races in Spain in which he did not participate due to injury.

TEAC noted that he did take part in one of the races and it was precisely in that race that he suffered the fall which prevented him from taking part in other races. Although the racer did not participate in the entire race, TEAC pointed out that, according to the commentaries on the OECD Model Convention, the concept of income deriving from a sporting activity is to be interpreted broadly. Income deriving from that grand prix and closely linked activities - advertising, sponsorship, press conferences - was therefore understood to have been obtained in Spain.

However, in races where the driver did not engage in any sporting activity - training or the race - nor in any related activity - advertising appearances, press conferences, etc. - it was concluded that the income cannot be considered taxable in Spain.

Failure by the authorities to diligently ascertain the address of the interested party and serve notice on them may lead to the voiding of a doping penalty proceeding

National appellate court judgment of February 29, 2024

The National Appellate Court upheld the appeal lodged against the judgment handed down by the Central Judicial Review Court. That judgment had upheld the doping penalty imposed on a well-known athlete by the Spanish Agency for Health Protection in Sport. In the appeal, the athlete alleged that he had suffered a material denial of the right to a defense because the authorities had failed to apply a minimal level of diligence in order to ascertain his address and had simply served notice at the address on record in the Federation's files, despite knowing that this was incorrect.

The National Appellate Court began by considering whether the authorities had met the standard of diligence to be expected when they unsuccessfully notified the interested party at the address they had on record, or whether, on the contrary, they should have made further inquiries in this regard. It also examined whether the possible denials of the right to a defense potentially occurring in the administrative procedure due to the failure to notify can be remedied by properly notifying and informing the interested party through the appeal procedure.

The court began by affirming that where notification is unsuccessful because the address is unknown, the authorities must deploy a minimal level of diligence in order to ascertain it, provided that the effort that this entails is not disproportionate. In this case, the authorities could have consulted other administrative registers to find out the address. It also pointed out that the fact of the interested party being properly notified and informed of the procedure at the appeal stage does not remedy any possible denial of the right to a defense that may have occurred during the ordinary procedure. Consequently, the National Appellate Court upheld the appeal and declared the penalty to be null and void.

The publication of a photograph in a news report without legal authorization or consent constitutes an unlawful breach of the right to control one's own image

Supreme court judgment of October 04, 2023

The Supreme Court dismissed the cassation appeal filed by a magazine against a judgment of the Madrid Provincial Appellate Court which concluded that the magazine had committed an unlawful breach of the right to control one's own image by publishing reports in which a photograph of the plaintiff was included without their consent. The magazine disagreed with this and argued in its cassation appeal that the provincial court had not properly weighed up the rights to information and freedom of expression against the plaintiff's right to control their own image.

The Supreme Court pointed out that the breach of the right to control one's own image had resulted from the fact that the photograph had been published without express legal

authorization, without the plaintiff's consent, and without any of the exceptions provided for in article 8 of the Law on the protection of the right to honor, personal and family privacy and to control one's own image being applicable.

It also concluded that the fact that the photograph reflected an image of a family holiday, that the applicant is an anonymous and unknown person, and that they were in the company of their sister - who is a public figure - does not eliminate the unlawful breach of the right to control one's own image. The cassation appeal filed by the magazine was dismissed for all these reasons.

Legislation

La Rioja introduces a personal income tax credit to encourage physical exercise and the practice of sports

La Rioja considers that the policy of promoting regular and organized exercise on a constant basis should be prioritized and implemented through a variety of measures including, in addition to those relating to sport, initiatives in the areas of education, health and taxation.

Therefore, effective since January 1, 2023, any expenses incurred in services related to physical exercise and the practice of sport will give entitlement to a credit of 30%, or 100% in the case of persons aged over 65 and persons with a recognized disability level of 33% or above. This credit is capped at €300 per annum.

Publication of the Tax Control Plan for 2024

The Tax Control Plan for 2024 envisages intensified efforts to correct cases where there is found to be a shortfall in taxes withheld on income obtained by non-Spanish resident artists and athletes, provided that they do not act through a permanent establishment..

Tax regime for the UEFA Women's Champions League 2024 and UEFA Europa League 2025

An amendment has been proposed in order to include an additional provision in the bill adopting measures to address the economic and social consequences of the conflicts in Ukraine and the Middle East and alleviate the effects of the drought, regulating the tax regime for the UEFA Women's Champions League 2024 and the UEFA Europa League 2025.


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