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Félix Plaza

Partner in charge of the Sports & Entertainment department

felix.plaza.romero@garrigues.com

T +34 91 514 52 00

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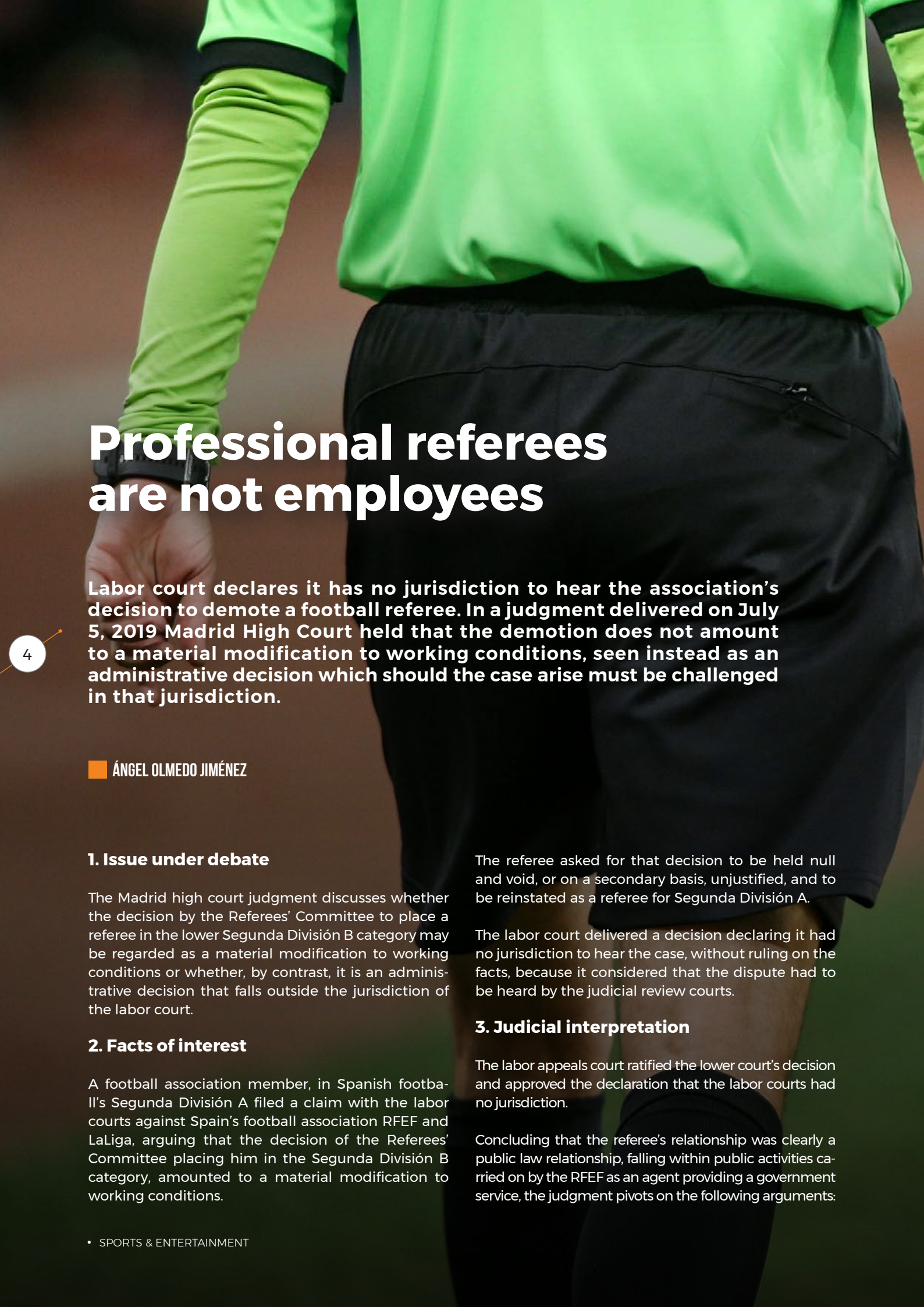


Professional referees are not employees

Labor court declares it has no jurisdiction to hear the association's decision to demote a football referee. In a judgment delivered on July 5, 2019 Madrid High Court held that the demotion does not amount to a material modification to working conditions, seen instead as an administrative decision which should the case arise must be challenged in that jurisdiction.

ÁNGEL OLMEDO JIMÉNEZ

1. Issue under debate

The Madrid high court judgment discusses whether the decision by the Referees' Committee to place a referee in the lower Segunda División B category may be regarded as a material modification to working conditions or whether, by contrast, it is an administrative decision that falls outside the jurisdiction of the labor court.

2. Facts of interest

A football association member, in Spanish football's Segunda División A filed a claim with the labor courts against Spain's football association RFEF and LaLiga, arguing that the decision of the Referees' Committee placing him in the Segunda División B category, amounted to a material modification to working conditions.

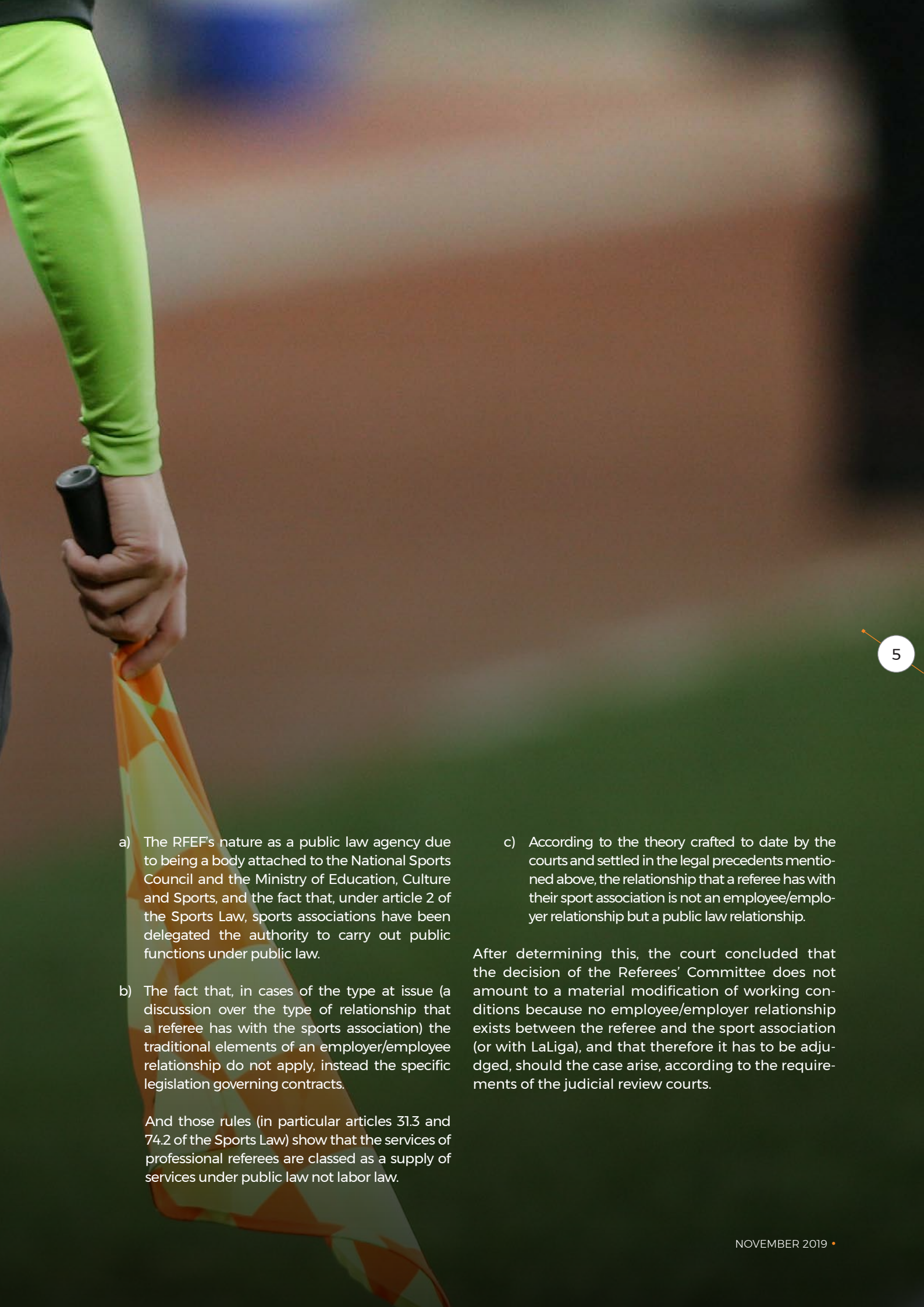
The referee asked for that decision to be held null and void, or on a secondary basis, unjustified, and to be reinstated as a referee for Segunda División A.

The labor court delivered a decision declaring it had no jurisdiction to hear the case, without ruling on the facts, because it considered that the dispute had to be heard by the judicial review courts.

3. Judicial interpretation

The labor appeals court ratified the lower court's decision and approved the declaration that the labor courts had no jurisdiction.

Concluding that the referee's relationship was clearly a public law relationship, falling within public activities carried on by the RFEF as an agent providing a government service, the judgment pivots on the following arguments:



a) The RFEF's nature as a public law agency due to being a body attached to the National Sports Council and the Ministry of Education, Culture and Sports, and the fact that, under article 2 of the Sports Law, sports associations have been delegated the authority to carry out public functions under public law.

b) The fact that, in cases of the type at issue (a discussion over the type of relationship that a referee has with the sports association) the traditional elements of an employer/employee relationship do not apply, instead the specific legislation governing contracts.

   And those rules (in particular articles 31.3 and 74.2 of the Sports Law) show that the services of professional referees are classed as a supply of services under public law not labor law.

c) According to the theory crafted to date by the courts and settled in the legal precedents mentioned above, the relationship that a referee has with their sport association is not an employee/employer relationship but a public law relationship.

After determining this, the court concluded that the decision of the Referees' Committee does not amount to a material modification of working conditions because no employee/employer relationship exists between the referee and the sport association (or with LaLiga), and that therefore it has to be adjudged, should the case arise, according to the requirements of the judicial review courts.

Tax residence of football players: comments on TEAC's decision of July 10, 2019

JOSÉ MARÍA COBOS GÓMEZ

1. Issue

Tax residence is a core issue in direct taxation because it determines as a general rule which country has the right to tax the taxpayer's income regardless of where that income arose. This is known as the principle of taxing worldwide income.

For personal income tax purposes, tax residence is determined by reference to the place where a person has their ordinary residence. Article 9 of Personal Income Tax Law 35/2006, of November 28, 2006 defines the tests to be met for an individual to be treated as having their ordinary residence in Spain. Only one of those tests has to be met for that effect to occur. These tests are as follows:

a) The individual stays for more than 183 days during the calendar year in Spain. To determine this period spent in Spain, sporadic absences are included in the time spent in Spain unless the taxpayer provides proof of tax residence in another country by producing a certificate of tax residence.

b) The main center or base of their economic activities or interests is directly or indirectly located in Spain.

Additionally two cases are provided allowing a presumption of tax residence in Spain:

a) It is presumed that a taxpayer's tax residence is in Spain where, by applying the tests set out above, the taxpayer's non-legally separated spouse and minor offspring, who are dependent on the taxpayer have their ordinary residence in Spain, unless proof can be provided that they reside in another territory.

b) Individuals who are Spanish nationals and provide evidence of their new tax residence in a country or territory legally classified as a tax haven do not lose their status as personal income taxpayers. This rule applies in the tax period in which the change of residence takes place and in the following four tax periods.

In sport contexts, tax residence conflicts are more likely to arise in the cases of athletes performing their sports outside the scope of the organization and management of an employer (in other words, those performing sports individually, without an employer/employee relationship), which is usually the case with tennis players, golfers or pilots. These athletes have a great amount of freedom to organize their sports activities, training sessions and competitions, without needing (or without being able in some cases) to put down roots anywhere in particular, especially in the

case of athletes participating mostly in international competitions. This may also be true of athletes with an employment relationship such as cyclists. The same problems arise in relation to international artists and entertainers.

By contrast, most athletes who carry on their activities under the umbrella of an organization (club), such as football or basketball players, have their residence in the country where their club is located, although residence conflicts may arise in the year they enter or leave.

This is precisely the issue examined in TEAC's decision of July 10, 2019 discussed below.

2. Background to TEAC's decision of July 10, 2019

The lawsuit stemmed from the petition made by a football club, during an audit, for a refund of withholding taxes on compensation paid to two football players between January and May 2015, due to considering they were incorrect payments.

Those players had contracts with the club until June 30, 2015, the date they notified the social security authorities of termination of their contracts. From that date, one of the football players started playing for an Italian team and another player, for a Turkish team.

The club had been paying withholding taxes under the personal income tax legislation between January and May 2015, because it assumed both players would be treated as resident taxpayers in Spain. From June 2015, on learning that when the contract with the club terminated the players would move abroad, it started assessing withholding taxes under the nonresident income tax legislation (IRNR).

Therefore, in the club's opinion, it had paid withholding taxes incorrectly between January and May 2015, because both players were actually nonresident in 2015 and therefore it had paid more withholding tax than was owed. It must be recalled, in this respect, that the withholding tax scale applicable to salary income obtained by taxpayers resident in Spain can go up to 45%, whereas the withholding taxes for nonresidents amount to 24% (or 19% if they are resident in an EU member state, following the amendment that came into force starting on January 1, 2015).

3.Parties' position

The auditors denied that request for a refund however by arguing that the athletes had spent more than 183 days in Spain in 2015 and that the club had not provided proof of the tax residence of the two players in that year in Italy and Turkey. The denial was founded specifically on the fact that, though the contracts in force until June 30, 2015 only provided evidence of the athletes' presence in Spain for 181 days, their sporadic absences also have to be included in the time spent in Spain, unless they provide evidence of tax residence in another country. Applying the theory determined by the Directorate General for Taxes (resolution V3473-15, of November 12), they argued that absences are always temporary or sporadic unless evidence is provided of ordinary residence in another country. In other words, absences cease to be temporary only when evidence is provided, by submitting a certificate of tax residence, that residence has been acquired in another country.

Without this proof, any time spent abroad is regarded as temporary and that period of time is included in the time they spend in Spain. Therefore, because during the audit work neither worker managed to evidence tax residence either in Italy or in Turkey, respectively, their absences must be treated as part of the time spent in Spain, which confirmed that the two footballers spent more than 183 days in Spain in 2015.

Before continuing, we must explain that the DGT did not express itself in exactly those terms in the resolution mentioned above. In fact, in that resolution the discussion focused on an analysis of the first test required in article 9.1 of the Personal Income Tax Law for determining tax residence, namely, to have spent more than 183 days, during the calendar year, in Spain and, primarily, the means of proof.

In the decision we are discussing, the appellant club relied on the supreme court judgment of November 28, 2017 (appeal 815/2017), in relation to the treatment that must be given to the time spent outside Spain as a result of taking a study scholarship. According to that judgment, the fact alone of the move abroad being for a short time, with a clear intention to return to the place of departure, does not imply that the absence is sporadic.

4. TEAC's conclusion

For the reasons explained above, TEAC upheld the claim on this point, by arguing that "a long and lasting absence by reason of being sent for work reasons to Italy and Turkey respectively cannot be regarded as temporary or sporadic, especially if moreover there no circumstances evidencing an intention to return to Spain following termination of the employment contracts with the football club". And TEAC added that the auditors had incorrectly founded the football players' residence in Spain on a finding of sporadic absences in Spain when no such absences existed. Moreover, from the standpoint that the auditors only attempted to determine tax residence in Spain by reference to a test based on the time spent in this country, it concluded that *"it makes no difference that the interested party has not supported the football players' tax residence in other countries in 2015"*, because the period evidenced according to the documents in the case record is

not higher than 183 days and there is no other element in the case record from which it may be concluded that the footballers were resident in Spain in 2015.

It therefore held that the personal income withholding taxes incorrectly paid between January and May 2015 that the club was requesting must be refunded.

The conflictive tax treatment of payments to players' agents

JOSÉ MARÍA COBOS GÓMEZ

1. Issue

Probably one of the most debated issues in recent years is the treatment applicable to payments to players' agents by clubs and whether they can be treated as made behalf of the player, which would increase the player's income. Both TEAC and the National Appellate Court have examined this issue, in the decisions discussed below.

2. TEAC decisions of July 10, 2019 and June 11, 2019

The debate arose over the interpretation of articles 19 and 20 of FIFA's Player's Agents Regulations in force until April 1, 2015. On the basis of those articles, **tax auditors have been finding that, when negotiating new contracts, the agent represents the player's interests not the club's.** Therefore, although it is common practice for agents to be paid directly by the club which is allowed by the Player's Agents' Regulations, instead of by the player (who in the eyes of the authorities is the client), it must be interpreted that the payment is made on behalf of the player.

According to this view, the payment made by the club to the agent on the player's behalf amounts to greater salary income for the player, and the agent's commission cannot be treated as a deductible expense from salary income because this is not allowed by the personal income tax legislation.

This debate was examined in the TEAC decisions of July 10, 2019 and June 11, 2019. Those decisions are based on the auditor's view that from the comments made above, *"it must be concluded that the FIFA regulations in force until 04/01/2015, which under Spanish law are mandatory for football clubs, allowed an agent to act as representative of a player or of a club, but subject to strict conflict-of-interest rules, under which the same agent could only act as representative of one of the parties".*

The appellant club argued that the new FIFA Regulations in force since April 1, 2015 now allow an agent (called intermediary) to act in the same transaction on behalf of the two parties, which must be used as a guide for interpreting the former Regulations. TEAC, however, recognizing that the new FIFA regulations *"entailed a change to the conflict-of-interest rules for agents, by allowing, for the first time, services to be provided simultaneously to both parties, with satisfaction of transparency requirements"*, rejected the club's argument, and concluded that *"it must be construed that the new regulations amend the former rules, and cannot be applied retroactively by means of interpretation guidelines as the claimant is seeking".*

After explaining this reasoning, TEAC held that, since it is unquestionable that double representation is prohibited (so where a player's agent participates they do so either for and on behalf of the player or for and on behalf of club), it needs to be determined whether the payments made to agents are in respect of services provided to players or of tasks ordered by the club. And, in this respect, TEAC highlighted that, in the examined case, the agents obtain remuneration that is linked to that of the players and conditional on the players remaining at the club, being therefore completely separate from their duties to defend the club's interests.

By contrast, TEAC emphasized that no item of evidence had been provided showing that the agents were actually providing a service ordered by the club let alone that they were actually representing the club in the transfer and signing market for football players.

For all the above reasons, in TEAC's opinion, it may be concluded by logical reasoning from a joint assessment of all the elements evidenced by the auditors throughout their work that the agents participated in the adjusted transactions on behalf of the football players and that the adjustment may be made under the principle of characterization set out in article 13 of the General Taxation Law. Therefore, whenever it is determined that the payment obligations entered into by the club are linked to the validity of the footballer's respective employment contracts, that the agents participated in the contracts concluded by the club with the football players and that the information in the press confirmed that the agents act as representatives of the football players, it may be concluded that all the indications point to the fact that the payments made by the club were made for and on behalf of the athletes they represent and they are the real clients for the provided services, regardless of the name that the club gave to the contracts signed with the players' agents, and of any consequences arising from the agent acting as intermediary for the player in the player's employment contract.

In the discussed decisions TEAC provides some final thoughts on the i**ncome that the operating procedure implemented by the club has meant for the players from a tax standpoint**, in that:

a) If their agents had invoiced them, they would have had to pay a VAT charge without being able to deduct it, because they are treated as end consumers and are not VAT taxable persons.

b) If the club had included the commission in their pay, by obtaining a greater amount of compensation, the players' taxable income would have increased and as a result, their personal income tax.

c) Additionally, they would have had to pay the commission to their agents without being able to deduct it for personal income tax purposes because they are taxed on salary income.

In short, TEAC confirmed the auditor's view, by arguing that *"those payments, made by the club to the agents, clearly represent an amount of income for the football players, in that it has saved them from having to remunerate their agents for the services provided in the transactions mentioned above. The logical conclusion is to attribute income to the footballers in respect of the payments made to the agents, because in short the provided services related to elements that clearly affected and benefitted the athletes"*.

3. National appellate court judgments of May 13, 2019 and June 12, 2019

The same issue was debated in these recent judgments, although from the standpoint of simulation. Both judgments related to the same club and player. The May 13 judgment was delivered in relation to the player's adjustment, whereas the June 12 judgment was delivered from the standpoint of the club, regarding a withholding deficiency.

In this case, the auditors considered that the payments made by the club to a company under "representation and management" contracts concealed payment of the commission that a football player had to pay that company for acting as the player's agent. Therefore, by taking the view that they are simulated or sham contracts and applying article 16 of the General Taxation Law, both the auditors and TEAC concluded that the payments made by the club to that company, including the charged VAT, should be reported as salary income for the player.

The National Appellate Court, in view of the existing documents, confirmed the authorities' conclusion by holding that the contracts concluded between the club and the agency company are "absolutely simulated contracts" serving as vehicles for payment of the commission that the football player had to pay the agency company for acting as the player's agent. The consequence of that simulation is that a tax advantage was obtained consisting in lowering the amount of salary income that otherwise could not have been reduced by the amounts paid to the agency company, because the income was not obtained from professional activities. As a result, the court held to be lawful the adjustment made by the auditors in this respect, namely, attributing to the player the amounts paid by the club to the agency company as salary income, including the VAT paid in respect of the services allegedly provided.

The facts that caused the tax authorities and the National Appellate Court to reach this conclusion are:

a) The club's contract with the agency company was signed on the same day that the player was hired by the club. Therefore, the obligation that the agency company agrees to perform (in essence, enabling the player's complete inclusion in the team; ensuring the player's compliance with the club's rules and not engaging in practices that could threaten the player's continuity at the club) has no content in itself, because it involves duties that the player has already entered into in its contract with the club, and besides, there is no rational equivalence to the remuneration that the club would have to pay for the services of the agency company.

b) Moreover, the amounts paid by the club are substantially the same as those covenanted in the contracts in force until that time between the player and the player's agent. So it is easy to surmise that the amounts the player had covenanted as remuneration for the services of the agency company are the same as the amounts the club had to pay to it for services that had no substance of their own and, as mentioned before, had no rational equivalence in a bilateral contract.

c) And the same thing occurred later, when on the same date that the player renewed his contract with the club a second representation contract was concluded. An examination of the payments made shows once against that it was the club that paid the commission that the player should have paid to the agency company for its services as the player's agent.

Because this overall analysis of the available proof was not refuted by the taxpayer, the only conclusion to be drawn from the described information is that the agency company's commission was paid by the club on behalf of the player and the vehicle for this was the contract between the club and the agency company concluded with absolute simulation because it had no valid cause.

Once this conclusion has been reached, the sums paid by the club to the agency company must be added to the player's salary income, including the VAT paid by the club, because it is the whole amount paid by the club that is salary income and the recipient of this type of income (other than income from professional activities) cannot deduct it to calculate net income.

NEWS

Garrigues Sports & Entertainment participates in DENAE forum: 'eSports: Manual legal de supervivencia'

On October 3 Ifema in Madrid hosted a forum on eSports (*"eSports: Manual legal de supervivencia"*), as part of Madrid Games Week, a videogames and leisure electronics fair organized by Spanish Videogames Association AEVI.

The roundtable was led by Cristina Mesa, principal associate in the Garrrigues intellectual property department, and one of the speakers was Ángel Olmedo, partner in the labor and employment department and co-head of Garrigues Sports & Entertainment.

At the forum various topics were addressed ranging from whether eSports should be treated as sport, the gamers' relationship with clubs, termination clauses for gamers, the impact of occupational risk prevention, rules on permits and work for foreign workers, to issues related to audiovisual rights for competitions and the treatment of publishers in this industry.

Opening ceremony for LaLiga Business School

On October 4 the opening ceremony for the second academic year at LaLiga Business School was held at the LaLiga headquarters, organized by LaLiga, in conjunction with Centro de Estudios Garrigues and Universidad Francisco de Vitoria. The programs offered include, for another year running, the MBA in Sports Business & Law, delivered in conjunction with Centro de Estudios Garrigues.

Félix Plaza, partner in the tax department and co-head of Garrigues Sports & Entertainment, participated together with LaLiga chairman Javier Tebas, LaLiga Business School principal José Moya, and Félix Suárez, head of postgraduate studies at Universidad Francisco de Vitoria, in the presentation of the various programs.

Judgments

1 Valencia High Court denies personal income tax deduction for tennis player's expenses

Valencia high court judgment, February 1, 2019

A professional tennis player claimed personal income tax deductions for the following expenses: utilities at a dwelling, items consumed in bars and restaurants, hair removal, laundry and clothing, public transport tickets, medical and pharmacy expenses, vehicle expenses and two cellphone lines. In addition to which she questioned the evidence of fault in the penalty imposed by the authorities.

Valencia High Court held that proof had not been provided of the requirements for each of the items mentioned for deduction of those expenses. So, it held in relation to several items that it was not possible to differentiate the expenses related to her professional activity from her own private expenses. Moreover, because the appellant had not reported any property used for her activity, the claimed use of a dwelling could not be allowed, and therefore the utilities costs were not deductible. As for the medical and pharmacy expenses, only the insurance premiums satisfying the conditions in the law are allowed to be deducted, which does not apply to pharmacy expenses. To claim expenses in respect of a vehicle, use of the vehicle in the economic activity must be absolute, which did not occur in the examined case.

Lastly, in relation to the pleading regarding the absence of any fault, the chamber held that in the appellant's actions there had not been an inadvertent error or a simple discrepancy over the content or scope of a provision, which evidenced the intentional element.

2 Supreme Court makes restrictive interpretation of telemarketing for commercial communications

Supreme court judgment, March 5, 2019

An audiovisual communication group appealed against the decision of the Spanish Markets and Competition Authority (CNMC) fining it for four serious infringements, consisting of broadcasting advertising messages on television for above the legally permitted length.

The chamber looked at what interpretation must be made of the provision containing the definition of telemarketing for it not to fall under the general length limits laid down for advertising messages. And against the arguments submitted by the appellant, the court held that only a restrictive interpretation is allowable, whereby the broadcasting of more than one advertising message below two minutes each cannot be considered telemarketing, even if the sum of all of them does go over that length. In short, under the interpretation adopted by the court telemarketing cannot be regarded as a block including the advertising of several products or services belonging to more than one advertiser, without any connection among them.

The court concluded that using the exceptional legal rules on telemarketing to broadcast conventional adverts as the appellant had done is a way of avoiding the maximum broadcasting time thresholds allowed for adverts.

3 Supreme Court confirms LaLiga's decision to deny a professional football player prior approval of a sport license

Supreme court judgment, March 12, 2019

An appeal was lodged against the court judgment confirming that LaLiga's decision to deny provisional approval of the professional footballer's license with a football club was unlawful. The plaintiff argued that it fell outside LaLiga's jurisdiction to deny the prior approval for a player's license on the basis that the club that hired him had overrun the limit on the cost of playing staff determined in the rule on the maximum salary limit. The plaintiff argued that the approval may only be denied on the ground of failure to satisfy strictly sports-related requirements.

The Supreme Court held, however, that protection, monitoring and supervision duties conferred on LaLiga with respect to its members include supervision of the requirements applying to licenses, not only the strictly sports-related requirements, but also those related to monitoring the club's finances.

4 Severance on expiration of the covenanted term of a contract also applies to athletes, not matter what they earn

Supreme court judgment, May 14, 2019

At issue was whether the provisions in labor law on the severance payments for employees on termination of their

contracts due to expiration of the covenanted term applies to what are commonly known as elite athletes.

The appellant football player considered that actually no distinction is made in the legislation that applies according to how much the athletes are paid. Conversely, in the club's opinion, professional athletes falling in the elite category do not qualify for the right to receive these severance payments, as a result of the various conditions and circumstances associated with them. Such as the fact that sports contracts are necessarily temporary. So, in the club's opinion, the reason for the existence of severance payments as a mechanism for promoting stability in certain sectors makes it unnecessary or unjustified in the case of elite athletes.

The court clarified however that the fact of receiving high salaries should not exclude them from a rule that the special law applies on a secondary basis, such as the general article on the severance payment at issue. In short, the chamber confirmed that the severance payment in respect of temporary contracts for individuals qualifying for the special arrangement for athletes cannot depend on their higher or lower level of earnings.

5 National Appellate Court confirms sanction imposed on football club for failing to produce documents in tax audit

National appellate court judgment, June 6, 2019

The National Appellate Court delivered a decision on an appeal lodged by a football club against a TEAC decision confirming the tax authorities' actions in a penalty proceeding implemented against that club.

In view of its failure to produce the documents requested by the tax authorities in an audit, the auditors considered an infringement had taken place consisting of resistance, obstruction, excuses or refusal in relation to steps by the authorities. The club pleaded the absence of any notice of the consequences of failure to produce the documents, and that the sanctioning authority had acted as if it were a personal matter, and reported the absence of reasons for the decision.

The chamber held that the notice did exist, in the notification of the commencement of the inspection work, even though it was not repeated in each of the signed official notices of findings; and it found no errors in the steps and decision in the procedure, or an absence of reasons for the penalty decision. This, combined with the fact that none of the allowed grounds for exclusion of liability were found to exist, meant that the imposed sanction was confirmed.

6 Football clubs are required to take measures to stop insulting chants at matches

National appellate court judgment, July 8, 2019

The National Appellate Court confirmed the sanction consisting of closure of two sections of the stands at its stadium imposed on a football club as a result of not taking the appropriate action against the chants of fans in this part of the stadium; chants inciting violence, racism, xenophobia and intolerance in sport.

Against the pleadings of a lack of proportionality and absence of a defined infringement asserted by the club, the chamber held that the chants directed at both the other team and against one of their players in particular, due to their repeated and insulting nature, should have determined the need for the appropriate measures to be taken to stop them and avoid incidents arising from them. So, the court considers that simply broadcasting a message by megaphone, accompanied by a video on the stadium's video scoreboard is insufficient, because the chants were reproduced before during and until the end of the game.

Additionally, the club's past record of a passive reaction to the behavior of a particular group of fans, described as an extreme right-wing group, provided greater justification for characterizing its conduct as a serious infringement, determining the imposition of partial closure of the stadium as a sanction.

7 Need to evidence the connection with the country of the new nationality of basketball players originating from outside the EU

National appellate court judgment, July 11, 2019

The ACB questioned the lawfulness of the decision of the National Sports Council determining the interpretation rules for clause one of the eligibility Agreement signed by the FEB (Spanish basketball association), ACB (Spanish basketball club association) and ABP (Spanish professional basketball players association), in relation to basketball players' eligibility requirements where they have a different nationality to the one submitted to be registered for professional competitions -national of a country with an association or partnership agreement with the EU with a clause on equal treatment in employment-. For a player to be regarded an EU player, the National Sports Council held it necessary to require evidence of family, sport and personal ties with the country in which they recently acquired their new nationality.

The appellant deemed this new interpretation in breach of the clause on equal treatment in employment in the international agreements signed by Spain, and of the non-transferable right to the free movement of workers within the EU. The chamber dismissed the appeal, however, arguing that the National Sports Council does not breach the rights mentioned in any way, instead by laying down the requirement for additional ties, it seeks to preserve equality and quality in professional basketball competitions, and so prevent the acquiring of the nationality of member states or of those countries included in the eligibility Agreement being used fraudulently by players to be registered for the various competitions (U.S. players mainly).

8 Input VAT deductible on advertising and sponsorship services with sports entities

Valencia TEAR decision, September 26, 2019

The economic-administrative court upheld the filed claim and voided the auditors' decision denying the deduction of input VAT paid by a company on a sponsorship agreement with a sports entity, for the reason that the received advertising services -primarily targeted at publicizing the taxpayer's business logo at the sport facilities and the club's shirts- had no economic sense for the sponsor, so they concluded they were not used in the company's activity and in short, the input VAT was not deductible.

Valencia TEAR found, however, that the auditors' reasoning, besides not denying the potential influence of the advertising on the sponsor's economic activity, involves unacceptable interference with the business decisions regarding the timeliness and suitability of the expense which cannot serve to separate them from the activity performed. It therefore allowed the right to deduct the input VAT and set aside the decision.

Resolution requests

1 The sums received for participation in sport information seminar organized by sports club are salary income

DGT resolution V0976-19, May 7, 2019

It was asked whether the 15% withholding tax rate is applicable to the sums obtained in return for participating in a sport information seminar organized by a sports club.

The Personal Income Tax Law characterizes as salary income the sums obtained from giving or speaking on courses or lectures, colloquiums, seminars and similar events, where those activities are not carried out with the organization of production and human resources for the taxable person's own account, or they involve events related directly to purpose of the activity of a taxpayer who was already carrying on economic activities. Since in this case the organization is done by the club, the income must be characterized as salary income subject to a 15% withholding tax rate.

2 Effective use rule as applied to copyright licensing services

DGT resolution V1059-19, May 19, 2019

The DGT looked at the liability for VAT on a copyright licensing arrangement under which a collecting society sent an invoice to a singer who is tax resident in the Canary Islands and gave a concert in Navarra.

Due to the services being provided to a client resident in the Canary Islands, they are considered supplied outside Spanish VAT territory and therefore not subject to Spanish VAT. It was asked however whether the test based on effective use or enjoyment of certain services was applicable, under which, if the service is effectively provided in Spanish VAT territory, it is subject to VAT, and also in the case of services that are provided and are directly and indirectly related to transactions performed in Spanish VAT territory. The DGT took the view that insofar as the copyright licensing service is used by the singer in performing transactions subject to VAT in Spanish VAT territory, the effective use and enjoyment rule is applicable.

3 VAT treatment of the signature of agreements with nonresident entities for the organization of sports events in Spain

DGT resolution V1239-19, May 30, 2019

The requesting party questioned liability for VAT on the signature of an agreement with a Swiss entity without a permanent establishment in Spain, for the organization of an international sport event in Spanish VAT territory.

The DGT first concluded that the various services provided by the requesting party do not amount to an aim in themselves and that, therefore, its activity consists of the provision of a single or complex service of organizing an event or congress (a single supply of services). Insofar as the client does not have its place of business in Spanish VAT territory, the service is not deemed performed in that territory, and therefore the requesting party does not have to charge VAT. Nor are supplies of goods and services by a local council as the owner of the sports stadium where the event will tax place subject to VAT (art. 7.8, VAT Law), although the permission to use the sports infrastructure for the event is subject, because it involves services related to real estate assets.

Regarding the requesting party's right to deduct input VAT this is a transaction that allows the deduction of the input VAT incurred on it in Spanish VAT territory.

4 Videogame players' training by a commercial company is taxable at the standard VAT rate

DGT resolution V1284-19, June 6, 2019

The request concerned whether the reduced 10% VAT rate could be charged on the services provided by a commercial company that is not a private establishment of a social nature, consisting in training videogame players aged over and under 25.

The entity does not qualify as a private establishment of a social nature, because the services are not provided in a context or program that could be deemed social assistance. Only if the activities fall within the definition of protection of children or young people, based on circumstances of need or other deficiencies of certain sectors of society (the elderly, minors and young people, ethnic minorities, drug addicts, refugees and asylum seekers, etc.), could the reduced rate be charged. Because this is not the case, the standard 21% rate applies.

5 VAT and personal income tax treatment of activity carried on by a professional pilot and model

DGT resolution V1290-19, June 6, 2019

The request concerned the deduction for VAT and personal income tax purposes of personal trainer, hair styling, clothing, traveling, meal and accommodation expenses incurred by a professional pilot who is also an advertising model and television commentator.

Activities related to services as a professional athlete and for the licensing of rights of publicity to various companies are subject to VAT, and therefore for the mentioned expenses to be deductible for VAT purposes, the acquired goods and services must be used directly in the performance of the activities carried on by the requesting party, unless they are capital goods. In the particular cases of the traveling, meal and hospitality expenses, the ability to deduct them for VAT purposes is subject to whether they are deductible for personal income tax purposes.

Within the scope of personal income tax, the net income from the economic activity performed is calculated using the direct assessment method and the ability to deduct the expenses is determined according to the corporate income tax legislation. So, to be able to deduct the mentioned expenses, they must have matching revenues from the performance of the activity, in addition to satisfying the requirements regarding their timing of recognition and recording for accounting purposes. The DGT clarified however that the expenses are not allowed to be deducted if they were incurred for taxpayers' own private uses , are simply cases of consumer spending, and it is sought to connect them with the obtaining of income from economic activities.

6 Concert service for weddings and hotels may be subject to reduced 10% VAT rate

DGT resolution V1456-19, June 18, 2019

The request concerned the VAT charge to be made by an individual engaged in giving concerts for weddings, hotels and public authorities.

The services provided by the requesting party are taxed at the 10% reduced rate instead of at 21% if the artistic services are deemed to relate to a theatrical or musical work as described below: (i) theatrical work: a dramatic, dramatic and musical, choreographic, pantomime or literary work where it is recited or adapted to be performed on stage and (ii) musical work: any that is expressed through a combination of sounds which may be combined with literature or not. Furthermore, for the reduced rate to apply, the services mentioned must be provided to the organizer of the work. If the foregoing requirements are not satisfied, the 21% rate will apply.

7 A change of job does not exclude the option of electing the special personal income tax regime for inbound expatriates

DGT binding ruling V1822-19, July 15, 2019

It was asked whether a Swedish national who received a job offer as country manager at a Spanish company operating in the sports industry is allowed to elect the special personal income tax regime for workers sent to Spain (inbound expatriates' regime).

Insofar as an employment relationship exists which started as a result of the move to Spain, the special regime may be elected, and the election must be properly notified. Moreover, even if the worker left the original job voluntarily to start new employment with another Spanish company, they will not be excluded from the special regime. Nor would a ground for exclusion arise if the worker similarly left the job that gave rise to the move to commence a directorship, if the other requirements continue to be satisfied.

8 Tax implications of organization of international tennis tournaments

DGT resolution V2130-19, August 12, 2019

The request concerned the corporate income tax, personal income tax and VAT treatment for various elements of the organization of international tennis tournaments by a company engaged in the operation of sport facilities, a tennis academy, a museum and a cafeteria.

Firstly, in relation to the prizes awarded to non-professional players, the DGT regards them as tax deductible expenses for corporate income tax purposes, in that they are not characterized as gifts due to belonging to the custom and usage of the type of tournament concerned. As for the personal income tax treatment of these prizes, from the payer's standpoint they are characterized as income from professional activities (or exceptionally, salary income) and subject to withholding tax. For the recipient of the prize they are characterized as capital gains, in view of the absence of an employment relationship or the organization of resources for their own account.

Lastly, in the DGT's view the requesting entity did not satisfy the necessary requirements for any VAT exemption in relation to the registration fees for tournaments (the entity is not a private entity or establishment of a social nature), which are taxed at 21%.

9 The special regime for partially exempt entities does not apply to the gift of a football pitch to pay a debt

DGT resolution V2174-19, August 14, 2019

The request concerned application of the special regime for partially exempt entities to the gift of a property used as a football pitch for the payment of a debt by a not-for-profit entity having as its purpose the encouragement, development and continued performance of physical and sport-related activities to discharge a debt incurred with another commercial company.

The DGT took the view that for the income to qualify for the proposed regime, under which any income arising on the transfer of elements used for the performance of the transferring entity's specific purpose or aim is exempt, a number of requirements must be satisfied, notably there must be an onerous transfer, use of the assets in the activity, reinvestment in fixed assets related to the entity's purpose or aim, together with various timing requirements. Insofar as the aim of the transaction was to discharge a debt, the DGT considered that the conditions for claiming the exemption were not met.

10 Royalty received by not-for-profit sports association, electing the regime for partially exempt entities, in respect of the training rights of a player is not exempt from corporate income tax

DGT binding ruling V2469-19, September 16, 2019

The requesting association's purpose was to promote and develop one or more types of sports (football in particular), the performance of the sport by its members and participation in sport competitions, without making a profit. It was going to receive a royalty in respect of the training rights of a player who was related to the entity determined under a provision of secondary legislation and it submitted to the DGT a request for resolution concerning the exemption from corporate income tax for that income.

The income obtained by the association is exempt if it comes from the performance of its purpose and does not arise from an economic activity. If the entity performed activities that determined the existence of an economic activity, however, the income from those activities would be subject to and not exempt from the tax.

From the information provided, the DGT considered that an economic activity existed with the relevant organization for its own account of material and/or human resources for the purpose of participating in the production or distribution of goods or services, and therefore the revenues obtained from providing the services in its purpose (including the training of a player) are subject to and not exempt from corporate income tax.