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Messi wins fight against mark 'Massi' after decade-long dispute

Cristina Giner Mas

The Court of Justice of the European Union has dismissed the appeals filed by the European Intellectual Property Office (EUIPO) and Spanish company J-M.E.V e hijos S.R.L. in a dispute that has lasted for almost a decade, and recognized that world-famous F.C. Barcelona player Lionel Andrés Messi Cuccittini holds exclusive rights in the mark Messi.

This is the mark registered by the player:

In 2011, the player filed an application with the European Union to register various merchandising items typical of a player with his ability to attract consumer interest, such as "photographic apparatus, protective equipment" (class 9); "clothing, footwear and headwear" (class 25), "gymnastic and sporting articles"(class 28).

First Mr. Jaime Masferrer Coma and following an assignment of rights, the company J-M.E.V e hijos S.R.L, which took over from him in the process, filed an opposition to the application based on the earlier rights in the mark 'MASSI', covering identical goods to those claimed by the famed footballer.

In each of their decisions on the opposition and on the appeal, the Office and the Board of Appeal both refused to allow registration of Lionel Messi's mark.

When the products were compared it was found that the signs had extreme similarities and identical features, since they shared the same target market, along with the same nature and distribution channel and consumer audience. As a result after performing a comparison of the 'MASSI' and 'M MESSI' signs, the EUIPO concluded that the marks were similar and that the relevant public, the so-called "average consumer", due to those similarities would consider that they had the same or a related business origin.

This last aspect is where the General Court of the European Union (GCEU) changed its view, which has now been confirmed by the Court of Justice of the European Union (CJEU).

The first aspect addressed in the decision by the GCEU was the error made by EUIPO when defining in this specific case, the concept of relevant public, in order to uphold the existence of a likelihood of confusion between the conflicting marks. EU case law has unequivocally held that the relevant public is the "average consumer in the EU, reasonably well-informed and reasonably observant and circumspect". However, the court considered that despite these similarities between the signs, the EUIPO failed to combine this case law principle with the fact that Lionel Messi enjoys a reputation not just among the relevant public, that is, the public that would acquire the goods for which protection was sought under the trademark, but also that he is well-known by most people, not just among the public interested in football, or sports in general. The GCEU held that the EUIPO's Board of Appeal should have examined, on its own initiative, whether a significant proportion of the public would associate the term 'MESSI' with the football player's surname.

The GCEU went on to say that it is highly unlikely that the average reasonably well-informed and reasonably observant and circumspect consumer was not aware of the existence of Lionel Messi and would not directly and automatically associate the mark with the player.

This ruling is particularly interesting for trademark law specialists, in that the GCEU openly reminds the Board of Appeal, that although Lionel Messi's representatives did not prove the fame or reputation of the Argentinian player, EUIPO was aware of this information from other sources when it delivered its decision. It indicated that the Board of Appeal should have based its decision on additional, alternative evidence to the evidence provided by the parties in the proceeding.

In earlier decisions EU case law has held that the Board of Appeal is entitled to base its decisions on any "well-known facts" (Judgment of June 22, 2004 Ruiz-Picasso vs OAMI, DaimlerChrysler (PICARO) T.185/02) which may be learnt from generally accessible sources, whereas the Board of Appeal, incorrectly applying case law, precisely establishes as a general principle that it should not have to clarify the facts involved in a particular case.

The CJEU has upheld the criterion of the GCEU that when comparing the marks 'MASSI' and 'M MESSI', consumers would perceive the differences between them and given that the term 'MESSI' is inextricably linked to the player, Lionel Messi, there is no likelihood of association or confusion for the average consumer.

With this ruling, Lionel Messi has finally had his trademark rights recognized in the European Union.

Boxer and manager do not have an employment relationship

Judgment by the Madrid High Court of Justice dated February 12, 2020

A labor court found that it had no jurisdiction to entertain a case concerning the relationship between a boxer and his manager, due to considering that it failed to meet the requirements needed for existence of an employment relationship under Royal Decree 1006/1985.

Ángel Olmedo Jiménez

1. Issue under debate

The Madrid high court judgment dismissed the appeal filed by a professional boxer and held that he did not have an employment relationship with his manager, in that the manager did not engage in activities for organizing sports events, his function instead was confined to trying to sign the athlete up for boxing tournaments.

2. Facts of interest

Boxer and manager signed a contract for services, for a five-year term, under which the athlete would provide his sports services "under the authority and representation of the manager".

Under the terms in that contract, the athlete authorized the manager to sign, on his behalf, all types of contracts, including for representation and for assigning rights of publicity, as well as to collect any payments from organizers, companies or private parties.

The boxer´s obligations under the agreement consisted mainly of participating in the tournaments or any other competitions that the manager has signed him up for. The manager agreed to provide the athlete with boxing wear, sports equipment and other material displaying promotional logos.

The signed agreement also stated that it was exclusive.

For his activities, the manager was to receive 40% of the boxer's earnings from his tournaments, whereas the manager had to pay the athlete €500 every month, for the first year, so that he could receive massages or physiotherapy treatments, and find highly qualified trainers (those sums would have to be refunded, however, by the boxer out of the earnings he would receive over the term of the contract).

Lastly, the contract stipulated, among other things, that, in the event of early termination without cause of the contract by the boxer, the boxer would have to indemnify the manager with €100,000. The same consequence was stipulated in the event of termination of the contract before the end of its term for a reason attributable to the manager.

The parties signed at the same time an authorization agreement, registered with the Professional Boxing Committee of the Spanish Boxing Association.

The boxer had a trainer that has been provided by the manager .

After requesting termination of the contract, the boxer filed a claim with the labor courts due to considering that his relationship with the manager qualified as employment. The labor court dismissed the claim, and held that it had no jurisdiction to entertain the submitted claim.

3. Judicial interpretation

Deciding on the filed appeal the high court confirmed the lower court's ruling finding that the labor court had no jurisdiction to settle the dispute.

The court's decision pivots on the following arguments:

a) From the way the relationship between the boxer and the manager was conducted it cannot be concluded that it falls within any of the scenarios described in article 1.3 of Royal Decree 1006/1985.

b) The manager was not responsible for organizing the sports events in which the boxer competed, his only tasks were to intermediate between the sports business people who organized the evenings and the boxer. So it cannot be held that his function was as employer of the athlete.

c) The aim, after all, of the manager's services was simply to sign up the boxer in competitions, which cannot be regarded as an activity for organizing sports events.

The high court concluded therefore that any potential disputes arising in that relationship fall outside the cases that can be entertained by the labor courts and must be heard in the civil courts.

NEWS

Best Lawyers pinpoints Garrigues Sports & Entertainment and its lawyers

For another year running, Garrigues Sports & Entertainment appeared among the law firms recognized by the Best Lawyers directory, which singled out its sports law practice for high-profile athletes.

Among the individual lawyers recognized by the directory were Félix Plaza, partner in the tax department and co-director of Garrigues Sports & Entertainment, and Carolina Pina, partner in the intellectual property department.

Garrigues Sports & Entertainment gives tax and labor law lectures on Sport Business Administration course, organized by Centro de Estudios Garrigues

Part of tax law and labor law lectures on the Sport Business Administration program took place at Centro de Estudios Garrigues in May and June. The lectures were given by Félix Plaza and Diego Rodríguez, partners in the tax department and co-directors of Garrigues Sports & Entertainment, along with José Manuel Mateo, partner in the labor and employment department, among other industry professionals.

Garrigues Sports & Entertainment participates in 7th LaLiga Conference on Sports Law 2019/2020

The 7th LaLiga Conference on Sport Law, organized by Fundación LaLiga was held at LaLiga's offices on July 7.

Ángel Olmedo Jiménez, partner in the labor department and co-director de Garrigues Sports & Entertainment, gave a talk on temporary layoff procedures, their impact on the social security system. Isabel Cortés Pulido, principal associate in the tax department, spoke on the subject of procedural time periods and their effect on appeals and audits during the state of emergency.

Click here to stay updated with all the alerts that Garrigues Sports and Entertainment has published in relation to the measures approved in relation to Covid-19.

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Judgments

1 Court sets aside administrative decision preventing motor racing competition in nature area

Valencia high court judgment, February 14, 2020

A motor racing club and an autonomous community motor racing association appealed against an administrative decision disallowing a motor racing trial in a natural park. The decision relied on various unfavorable reports, based on the applicable environmental and urban planning legislation.

The appellant argued that the article underlying the challenged decision is precluded by the law due to being secondary legislation, which breaches the principle of the hierarchy of legislation and therefore renders the appealed decision null and void. It also pleaded breach of the estoppel doctrine, in that earlier editions of the trial had been authorized due to the authorities concluding in light of the conditions in which the trial is held that it had no adverse effects on the natural park.

The high court partially upheld the appeal, by allowing the claim that it had breached the principle of the hierarchy of legislation, and held null and void the article used as a ground for refusing authorization to hold the trial, although it dismissed the other arguments in the appeal, and left it in the hands of the autonomous community authorities to decide on the authorization, in view of the chamber's findings in the judgment.

2 Income from a music performance and income from the amounts paid to the organizer are both taxable in Spain

Valencia high court judgment, February 25, 2020

Valencia High Court applied the case law settled by the Supreme Court in its judgment on December 7, 2012 (case U2) and held that in addition to the amounts obtained from the artist's personal performance, the amounts paid to the concert organizer to allow shows to be held in Spain are also taxable in respect of nonresident income tax, under article 19.2 of the tax treaty with the U.S. and article 13 of the Nonresident Income Tax Law.

It also held to be taxable in Spain any income received by companies that work for the artist to promote the artist's performances, unless it is evidenced that the artist did not participate in generating the income of those other people, which it did not find had happened in the examined case.

The court set aside the penalty, due to the absence of reasons by arguing that it does not contain sufficiently descriptive reasoning on conduct or on facts. Furthermore, no concealment was found, because the income was disclosed and international treaties were used to support that it was not taxable.

3 It is valid to make pro rata payments of indemnity for termination of the contract of a professional cyclist

Judgment of Navarra Labor Court no 1, March 3, 2020

A professional cyclist filed a claim against the company that had hired his services because it had distributed the indemnity for termination of his contract determined in that contract into pro rata payments over the last year, by arguing that the contract clause was null and void as a matter of law and those sums were salary payments.

The company countered by pleading that the clause was known and freely accepted by the worker. The parties were not therefore disputing the legality of the indemnity, instead the validity of the clause.

The court held that the clause was lawful and that neither the case law applicable to professional athletes, nor the Workers' Statute disallow the distribution of indemnity into pro rata payments made in advance, if they do really relate to advance payment of the item concerned and do not cover other salary items in which case they may be treated as evasion.

4 General Court of the European Union sets aside decisions on state aid granted to certain football clubs

Judgment by the General Court of the European Union (TGEU), March 12, 2020

Two football clubs appealed to the TGEU against the European Commission's decision to class as state aid guarantees given for foundations connected to them by a government business enterprise attached to an autonomous community government body. This same decision, delivered in relation to other clubs in an identical position had already been set aside by the EU court in an earlier case.

The TGEU held that the Commission did not take into account all the relevant evidence enabling it to determine whether the

club would have manifestly obtained comparable facilities from a private investor, and that it had not substantiated its affirmation that no market price existed, because it failed to look for a market price with which to compare the premium charged to the clubs.

The TGEU also considered that the Commission did not take into account the foundation's economic and financial situation either when determining the risk assumed by the guarantor, nor did it consider, when assessing whether an actual advantage existed, the pledge granted to the government enterprise as security.

It concluded therefore that the challenged decision by the Commission had to be set aside.

5 National Appellate Court confirms corporate income tax assessment decisions on the SGAE

National appellate court judgment, March 19, 2020

Spanish copyright collecting agency Sociedad General de Autores y Editores (SGAE) appealed against a corporate income tax assessment for fiscal years 2008 and 2009. Because the organization is taxed under special regime for partially exempt entities, it argued that the amounts allocated to the supplementary activity fund account ("*Fondos PAC*") must be treated as exempt income, and it is therefore correct to decrease the tax base in respect of revenues and increase it in respect of expenses, because they are not from the performance of an economic activity. The National Appellate Court, however, adopted TEAC's principle by holding that by collecting and distributing copyright fees SGAE does meet the organization of resources test determining the conduct of an economic activity.

Therefore, any copyright revenues not claimed by their owners that the SGAE allocates to the fund account as "fully owned funds" cannot be classed as exempt income, and there is no reason to decrease the tax base. Concerning the increase for expenses, the National Appellate Court disallowed the appellant's claim by holding that the treatment of those items as deductible provisions is unjustified, in light of the legal and bylaw origin of their use for support purposes, together with the fact that they exceeded the percentage allowed in the Intellectual Property Law.

Lastly, the National Appellate Court disallowed the secondary use of a tax credit for gifts on the payments to a foundation due to failing to meet the requirements in Law 49/2002, namely producing a certificate for the gift and the existence of consideration, consisting of services for promoting culture.

6 False football players' agent convicted by provincial appellate court for deceit

Barcelona provincial appellate court judgment, March 25, 2020

After being convicted at first instance the individual appealed against the criminal court's judgment finding a criminal offense of deceit as a result of the sale of shares in a representation company for football players stating that he acted as a football players' agent, a claim that was not true.

The appellant pleaded error in the assessment of evidence, together with a breach of rights of due process with all the protection, the right to an effective remedy and the constitutional duty to give reasons for judicial decisions.

After examining all the evidence taken in the trial and the lower court judge's assessment, the National Appellate Court dismissed the lodged appeal, because the evidence had been formed rationally and logically. The court held that the appellant's collaboration with a real football player agent before and after the facts does not stop his behavior meeting the definition of the offense. Additionally, the criminal offense of deceit clearly existed, in that the individual did not even have the authority to bind the company, despite presenting himself as owner of the shares in the contract. Lastly, sufficient reasons were found in the appealed judgment.

7 Fine for giving free match tickets to club's extreme right wing fans

Lugo judicial review court judgment, April 15, 2020

Lugo judicial review court no 2 dismissed a club's appeal against a decision delivered by a Lugo government suboffice imposing a €50,000 administrative fine for allegedly committing an infringement classed as serious, related to violence, racism, xenophobia and intolerance in sport.

The court concluded that the evidence gathered in the penalty procedure showed that the club directly or indirectly provided the extremist group with courtesy tickets to attend a particular match.

The decision highlighted moreover that evidence had been provided that both clubs signed a week before the game a document in which the defendant club agreed not to supply passes to "groups that were problematic or had a history of violence", and the tickets should have been allocated for invitations needed by the entity, board, players and sponsors.

8 Provincial appellate court convicts management of a football club and two players for corruption in sport

Navarra provincial appellate court judgment, April 23, 2020

Navarra appellate court examined a case involving an alleged offense of corruption in sport committed by the management of a professional football club. It held proven that an agreement existed between members of the club's management and two players in a rival team to prompt them to win against another team, in addition to allowing themselves to be beaten on the last day of the season.

It also held proven that the club's management themselves had made fraudulent use of the club's funds in several years. The defendants made unsubstantiated withdrawals of funds from ticket office sales and season tickets. A portion of these sums was also used to rig the matches.

Lastly an offense of falsifying accounts was also found to have taken place, consisting of recording invoices for non-existing real estate transactions.

9 Supreme Court corrects judgment upholding VAT and personal income tax fraud by football club

Supreme court judgment, May 19, 2020

A football club lodged a cassation appeal against a judgment by Madrid Provincial Appellate Court that held proven the existence of tax fraud committed on VAT and personal income tax returns in various fiscal years, although it relieved the club from criminal liability. The club argued that its right to presumption of innocence had not been observed, and it had also been denied the right to defend itself because the evidence taken by the provincial court had not been admitted.

The Supreme Court held that tax fraud had not been sufficiently evidenced, because the finding of proven facts made in the appealed judgment cannot be substantiated simply by referring to the expert reports that had been issued and clarifying them. It also found that there had been a deficiency in proving the facts, equivalent to failure to give reasons, which harms the right to an effective remedy.

Lastly, although the other side pleaded the club's lack of standing to sue as a result of being the party with secondary civil liability, the Supreme Court recognized its standing, even if the appealed judgment acquits the club's former senior managers who had been accused. The Supreme Court also held that the harm caused to it by the provincial appellate court's affirmation that the club had committed tax fraud confers standing on it.

10 The supply of online gambling games in Spain under a license obtained in another member state is not precluded by EU law and does not amount to unfair competition

Supreme court judgment, June 5, 2020

A cassation appeal was brought in relation to a claim filed by a well-known betting company against another operating internationally, due to this second company supplying gambling games and betting services to users located in Spain on its website before the first authorizations for supplying these types of services online had been granted, by using a license obtained in Gibraltar. The claimant argued that this conduct amounted to unfair competition.

Despite the claimant's allegation of a breach of EU law, the Supreme Court held that the examined conduct did not go against EU law. The court went even further by holding that the previously existing domestic law, on which the appeal was based, placed an excessive restriction on the freedom to provide services.

11 Payments by a club to a football player's agent are salary income for the player

TEAC decision, June 11, 2020

TEAC reiterated the principle in its earlier decision on July 10, 2019 and confirmed the challenged decision and the tax adjustment issued to the football player, as a result of treating as salary income the club's payments to the player's agent made for and on behalf of the player, and not reported on that player's personal income tax return.

The claimant pleaded that the tax auditors incorrectly interpreted the Player's Agents Regulations, which must be used for interpretation in their current wording allowing an agent to act in the same transaction on behalf of the two parties. TEAC held that playing a dual role is prohibited, if the agent acts in a transaction he does so on behalf of one or other party, and he represents the player's interests in this case, so the payments made by the club to the agent are additional income for the player.

Regarding the penalty, although TEAC held that the intentional element of fault exists and there are sufficient reasons, it set aside the penalty because it had not been calculated correctly, due to there being no tax payable after

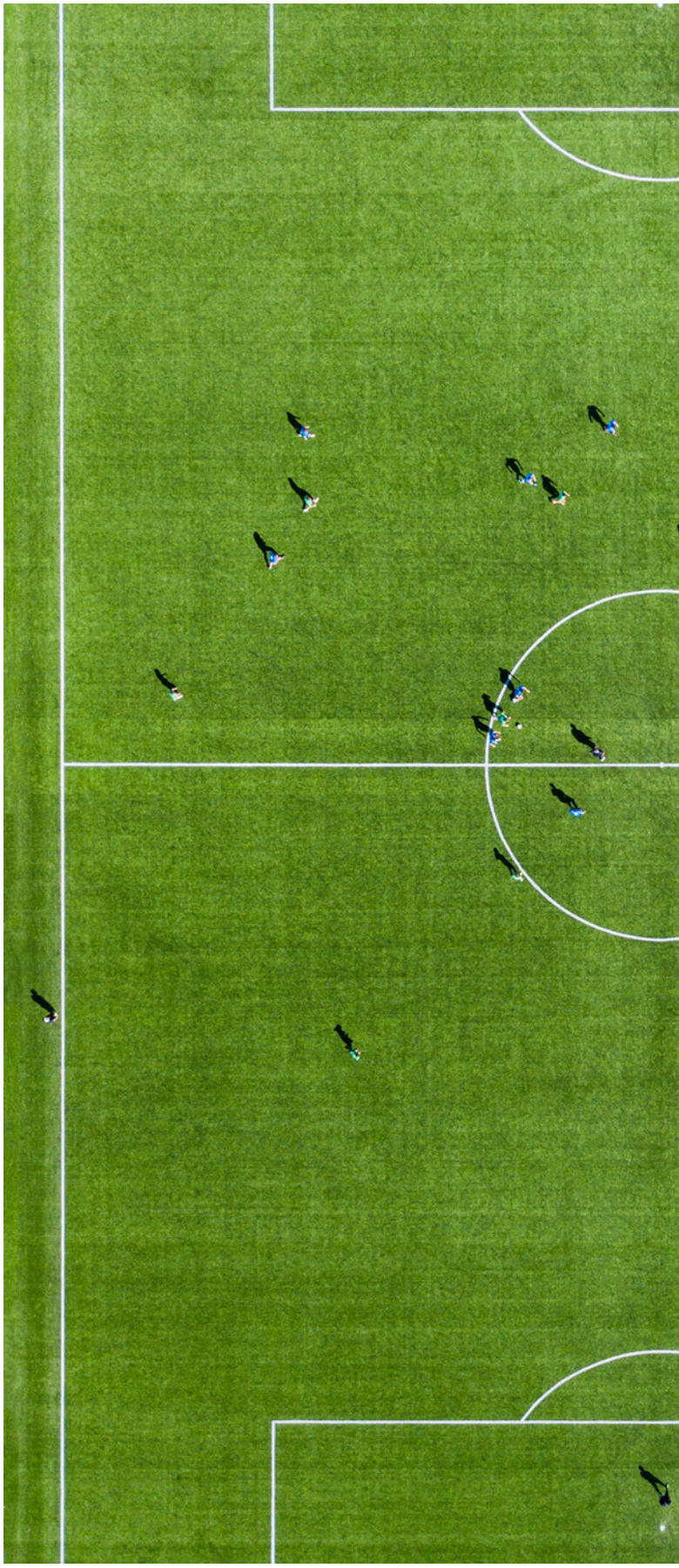
the adjustment, following an earlier adjustment to the club's withholding tax, which reduced the footballer's tax liability to zero.

12 Access to stadiums and broadcasting of content within the limits imposed in the applicable legislation

Supreme court judgment, July 9, 2020

LaLiga lodged a cassation appeal against a national appellate court judgment confirming a penalty imposed on it due to restricting access by an audiovisual and news services company to stadiums during first and second division football matches.

Adopting the National Appellate Court's principle, the Supreme Court held that if the content later broadcast by the audiovisual and news services company is within the limits placed in the applicable legislation – namely, match summary broadcasts not longer than 90 seconds and expiring in 24 hours – it is unable to find abusive conduct on the part of that company.



Resolution requests

1 DGT examines the classification for the tax on economic activities of online sales of music by its composer

DGT resolution V0223-20 of February 25, 2020

The issue submitted for resolution concerned which caption should be used in the classifications for the tax on economic activities for the activity carried on by the requesting individual, resident in Spain, a musician composing his own music which he sells online on music portals hosted outside Spain, mainly in euro area countries.

After confirming that the activity involves trade or service provision on the internet or by other electronic means, the DGT concluded that the right group is 039 in section three of the classifications: "Other activities related to music, not included in other captions". The DGT recalled, however, that under the applicable legislation, the requesting individual is exempt from the tax on economic activities.

2 Classification of services provided by a booking agent in relation to a concert

DGT resolution V0311-20 of February 11, 2020

The request concerned the right VAT and personal income tax treatment of amounts billed in relation to a band concert by a booking agent to a council.

On the subject of VAT, the DGT specified that, because the booking agent is acting for itself and on its own behalf when billing the services to the council, the agent is treated as an organizer of a musical work, subject to the reduced 10% rate where the arts services relate to a theatrical or musical work as defined in the VAT Law and are provided to the organizer of that work. If, by contrast, the agent's services only comprise mediation work, the standard 21% rate applies.

Secondly, for personal income tax purposes the band's performance is classified as income from economic activities subject to the standard rate, unless the taxpayers are at the start of their activities, in which case the reduced rate applies.

3 Revenues obtained by equestrian judge, classed as salary income

DGT resolution V0349-20 of February 14, 2020

It was asked how to classify the income obtained by sport judges hired for equestrian competitions by sports clubs or committees organizing them.

In the DGT's view, according to its settled principle, any income received for performing their work by judges belonging to sports associations must be classified as salary income, because it does not meet the test requiring organization for their own account of the means of production and human resources that determines the existence of economic activities.

4 Illusionists are treated as artists for VAT purposes, and taxed at the reduced rate

DGT resolution V0463-20 of February 26, 2020

The DGT analyzed the VAT treatment of the activity of an individual providing services as illusionist (magician) to organizers of theatrical works.

It specified first that the requesting individual is treated as a trader or professional and any supplies of goods and services made in conducting his trading or professional activity in the VAT area are subject to VAT. Furthermore, in view of the existence of a specific caption in section 3 of the classifications for the tax on economic activities for illusionism, any individuals providing illusionist services are treated as artists providing theater or pantomime performances, among others, and that therefore they are subject to 10% VAT if the services are provided to producers of films likely to be shown at theaters and to organizers of theatrical and musical works.

5 Yoga classes given to obtain a yoga teacher qualification are VAT exempt

DGT resolution V1053-20 of April 15, 2020

It was asked whether VAT relief could be claimed for training services by a company giving yoga classes to train yoga teachers.

The DGT specified that, if the requesting individual's classes are given to obtain a yoga teacher qualification they are exempt from VAT, due to being recognized and accredited by the competent authority. It also specified however that the relief is not available for practicing sport, which takes place in yoga classes, so yoga classes given as a sport activity are subject to and not exempt from VAT, taxable at the standard 21%. rate.

6 Income obtained under a sponsorship agreement between a foundation and an athlete is treated as income from economic activities

DGT resolution V1157-20 of April 29, 2020

The request concerned the applicable withholding tax on the fee agreed in a sponsorship agreement between athletes and a foundation, under which the athletes use the foundation's image and logo and license it to use their images in exchange for payment.

The DGT considers that the activities carried out by the athletes fall within the classifications for the tax on economic activities and therefore any income they obtain is classified as income from professional activities, including the sums paid by the foundation due to relating to their status as professional athletes.

The standard 15% withholding rate applies, concluded the DGT, although on the portion relating to assignment of the rights to use their images the rate is 24%, which will apply to the other fees if the portion relating to the rights to use their images cannot be separated from the rest.

7 Aid granted by Spanish Motor Racing Association to high-level athlete is not exempt

DGT resolution V1176-20 of April 15, 2020

It was asked whether the aid granted throughout 2019 by the Spanish Motor Racing Association to the requesting individual is exempt, considering that he was conferred high-level athlete status by the Spanish Sports Council (CSD) on December 20, 2019.

The DGT first analyzed which types of aid are eligible for the relief, finding that it only applies to economic aid for sports training and technical skills teaching provided to high-level athletes and that are included in the ordinary and extraordinary budgets approved by the CSD, or funded directly or indirectly by the Olympic Sports Association, by the Spanish Olympic Committee or by the Spanish Paralympic Committee, and did not consider the relief applicable to the aid described in the request, due to not meeting the requirements laid down by the applicable legislation.

8 Tax treatment of overnight expenses incurred by referees

DGT resolution V1235-20, May 4, 2020

The submitted issue concerned the overnight expenses of a referee who sometimes pays the expenses incurred for his overnight stays, and at other times those expenses are paid by a travel agency.

If the sports association makes available to sports referees the means to travel to the place where they have to provide their services, in other words it provides the means of transport, and accommodation if needed, no income arises because there is no private gain for them.

If the association refunds the expenses they have incurred to travel to the place where they will provide their services and the referees fail to substantiate that the refunds cover the exact amount of those expenses, or it pays them a sum of money and leaves it up to them to decide how it is to be allocated, it is taxable income in cash which is classed as salary income, subject to withholding tax.

Lastly, in relation to the ability to deduct expenses from the fees received as a result of his work as referee, because they do not fall within any of the cases defined as deductible expenses from salary income, they cannot be deducted.

9 Proportional distribution rule applies to a singer's activities

DGT resolution V1577-20 of May 25, 2020

The issue concerned the VAT and personal income tax liability of a singer who signed a contract with a company for his songs to appear on digital platforms and for him to receive royalties.

Firstly, he meets the requirements to be classed as a trader or professional, and the supplies of goods and services that a trader or professional makes in their trading or professional activity in the VAT area are subject to VAT, although the professional services involving the assignment of copyright, provided by the requesting party as a musical composer for a business entity in respect of which he will receive the royalties are exempt. His concert performances are subject to the standard 21% rate, unless he may be regarded as an artist for the purposes of applying the reduced 10% rate (if they relate to a theatrical or musical work and are provided to its organizer), and the proportional distribution rule applies if services eligible for a deduction (musical performances at concerts) are provided simultaneously with others that are not (copyright royalties, exempt).

In relation to personal income tax, since both the income from concerts and that from royalties being income are obtained from an (artistic) professional activity, withholding tax must be deducted under the standard rules (15% or 7% at the start of the activity).

10 Payments to nonresident artists for activities in other countries are not taxable in Spain

DGT resolution V1887-20 of June 10, 2020

The issue concerned whether the hiring of European and American artists by a Spanish company to provide services in Saudi Arabia is subject to withholding tax, if the artists travel directly from their home countries to the country where they will provide their services.

The DGT first analyzed the Saudi Arabia-Spain tax treaty, concluding that it is applicable, although they would have to examine the treaties signed between the states of residence of the various artists and the state where they perform their artistic activity (Saudi Arabia in this case).

Additionally, the domestic nonresident income tax rules determine that a payment made to a non-Spanish resident artist in respect of a performance outside Spain is not treated as income obtained in Spain and therefore not taxable in Spain.

11 The income obtained by a nonresident from a prize in a film award event held in Spain is not taxable in Spain

DGT resolution V1961-20 of June 16, 2020

It was examined where the place of supply should be for income obtained at a film festival in Spain by a South African resident as a prize for a short film.

If filmmaking is found to be the individual's economic activity, which leads him to enter for awards like the one described, any income he obtains would be business profit and taxable only in the state of residence in this case, as stated in the South Africa-Spain tax treaty.

If, however, filmmaking is not the individual's economic activity, any income he obtains would not fall within any of the specific categories in the tax treaty and therefore under the provisions determined for "other income", the income relating to the prize is taxable, again, only in the state of residence, and Spain has no taxing power.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