Sports and Taxes

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Transfer and loans

Transfer and loans - Germany

- **Special tax regulation (limited tax liability)**

  Loans

  - Income earned by a foreign club loaning a player is subject to limited taxation in Germany. Signing fees to a player are not in scope. Unclear: Payments to agents.
  - Tax collection through a withholding tax (15,825%). The receiving club is obliged to withhold and pay the withholding tax from the remuneration. Receiving club issues a WHT certificate.
  - Classification of lending fees as corporate profits under treaty law (Art 7, not Art 17 or Art 12). Attention: two-act procedure to take into account the Treaty law. The payment debtor may only take treaty law into account if the payment creditor has previously applied for a WHT exemption certificate from the Federal Central Tax Office (electronic procedure). Without exemption certificate, obligation to deduct WHT! Remuneration creditor can apply for a refund. It is not possible for the person liable for remuneration to pay the remuneration in full and then apply for refund himself.

Transfer and loans - Germany

Transfers

- Limited tax liability is limited on the profit from the transfer of players to a German club. According to German case law, the acquisition (not the loan) of a player results in the capitalization of acquisition costs (transfer fee) and incidental acquisition expenses (e.g. agent fees) => intangible asset right to use the player. The profit of the transferring club (difference between the transfer proceeds less acquisition costs) is subject to CIT. The calculation has to be made under German rules.
- The transferring club must file a tax return in Germany (corporate income tax, not trade tax, tax burden 15,825%). In the case of a DTA, the assessment obligation does not apply.
- Germany enforces the tax claim and, if necessary, issues tax assessments by way of estimation. Enforcement using the EU Recovery Directive.

Portugal

Taxation of international transfers of athletes

- Income arising from the transfer of players from a nonresident entity to Portugal, regardless if the owner of the economic rights is a club or other entity (e.g. investment fund, agent, player, etc.), is not taxed in Portugal;
- Income arising from the transfer of players from Portugal to abroad is qualified as capital gains, subject to taxation in Portugal at the level of the Portuguese Club; however,
- In the case of a player's transfer to a nonresident entity, carried out by a Portuguese Club, which, previously, proceeded with the transfer of a percentage of the economic rights to a nonresident and non-sports entity, the income paid to the latter entity by the Portuguese Club is qualified as capital income, being subject to taxation in Portugal.

  This will be the case, in particular, of a Club (A) resident in Portuguese territory that transfers all of it, or part of the economic-sports rights relating to a player with which it maintains a sports employment contract, to a nonresident entity (B) and which, subsequently, transfers that player to another Club (C) and assumes before this Club (C) the transfer of rights held by the nonresident entity (B), becoming, therefore, the Club (A) debtor to this entity (B) of the value corresponding to the percentage held by this entity (B), corresponding to the rights now assigned and which, previously, they had been acquired from Club (A). Should this be the case, WHT may be reduced or waived under a Tax Treaty.

Portugal

Taxation of international loans of athletes

- If we are before a non-remunerated loan, where the payment of the salary and any other costs is made by the transferor, any costs borne by the latter (salaries, amortisations, etc.) are tax deductible. Not subject to VAT (because it is considered as made in the benefit of the transferor).
- If we are before a remunerated loan, this is subject to taxation in Portugal. Any costs borne by the transferor (salaries, amortisations, etc.) are tax deductible.

  Loan is subject to VAT:

  i. If the loan is made from a foreign Club to a Portuguese Club, the supply of services is located in Portugal and, therefore, subject to VAT in Portugal (self-assessed by the Portuguese Club);

  ii. If the loan is made from a Portuguese Club to a foreign Club, the supply of services is located abroad and, therefore, not subject to VAT in Portugal.

  However, if the consideration paid for the loan corresponds exactly to the refund to the transferor, or payment to the player, of the salaries, social contributions and other costs that are or should be borne by the Club that holds the sports rights of the player, there is no supply of services and, therefore, the loan is not subject to VAT.

Taxation of International Loans of Athletes - United States

- In general, tax deductions will follow who the employer is for US tax purposes. In general, the employer will be the club who the player plays for during the loan.
- Withholding tax may apply to payment from US club to non-US club.
- Receipt of loan fee by US club would be taxable as ordinary income.
- Reporting concerns for club and player.
- Employment tax considerations (additional taxes may apply to compensation).
- US state tax will also apply to income as applicable.

Transfers of football players - Italy

- A professional football player's contract for sporting services qualifies as an instrumental intangible asset that can be transferred to third parties and is capable of generating taxable gains or losses for the club

Free transfers

- In the past, the Italian Revenue Agency has assessed the deductibility of losses resulting from the “zero-cost” transfers of players by arguing that a “gratuitous” transaction cannot be deductible
- The position of the Italian Revenue Agency has been completely contradicted by the judgments of the Italian Supreme Court (Cass. 25.1.2019 No. 214613 and Cass. 8.10.2020 No. 21701). According to the Supreme Court, the “zero-cost” transfer remains onerous even if it does not involve payment of a price, as the absence of the price does not automatically categorize the transaction among gratuitous ones.
- According to the interpretation of the Supreme Court, therefore, onerousness, necessary for the deduction of impairment losses, does not necessarily have to be found in the payment of a price but in the assumption, by the acquiring club, of an obligation, and in the attainment of an advantage for both parties: the acquisition of the right to use the player for the transferring club, and the release from the obligation to pay a salary for the selling club, often related to players no longer considered strategic.

Taxes Over Transfers – Spain

Buyout Clause:

- Income or Capital Gain? Neymar transfer from Barcelona to PSG.

Player Transfers from Brazil and Argentina:

- Foreign entities carrying economic activities in the Spanish territory (?).
- Binding Rule V2164-14 from the General Taxation Directory regarding the transfer of James Rodriguez from AS Monaco to Real Madrid.
- Absence of treaties to avoid double taxation.

Taxes Over Transfers – Brazil

- **First 5 (Five) years following SAF's incorporation:**

➢ Unified collection of several federal taxes (IRPJ, CSLL, PIS, COFINS and labor social contributions);

➢ Tax rate of **5% (five per cent)** over monthly revenue ascertained (cash basis);

➢ Revenue derived from the transfer of athlete rights **excluded** from the taxable base

- **Sixth year after SAF incorporation onwards:**

➢ Tax rate of **4% (four percent)** over monthly revenue ascertained (cash basis);

➢ Revenue derived from the transfer of athlete rights **included** in the taxable base.

Player`s agents

Market Tendencies – After FIFA's New Regulations:

- Representation of the club of origin (10% fee and no term restriction).
- Market Concentration – Multi Agents/Agencies Platforms – Associations.
- Use of offshore jurisdictions for "collaborations" on double representation (Forbidden! Rule to prevent connected agents).

Agent's Fees - Tax Liability (Spain):

- Where the taxation event takes place?
- Where is the activity performed? Where the selling club is based? Where the destination club is based? Where the agent's company is based?
- What does the agent's activity effectively consist in? Are the agents/agencies carrying on economic activities on every jurisdiction they close a transfer to?
- Real business consistency principle!

Taxes Over Agent's Fees in Spain:

- Payment made by the club on the behalf of a player = income!
- Tax on 50% of the agency fees paid from Spanish clubs to agents/agencies on the signing of players.
- Taxes are withheld.
- Other 50% where the agent/agency is based.
- Conflict with the OECD treaty to avoid double taxation.

Portugal

Agent´s remunerations: The new FIFA Football Agent Regulation. Tax impact. (I)

- To the extent that it was common for clubs to pay the agent's fees on behalf of the player, the amount of such fees was considered as a benefit in kind subject to PIT. No withholding tax was applicable upon the payment, and therefore the player would have to pay the tax during the subsequent year after filing his PIT return.

  As clubs will no longer be able to pay the agent´s fees on behalf of the player (except if the player has a negotiated annual remuneration lower than USD 200,000), this tax framework is no longer applicable. It may be agreed between the club and the player to deduct the agent fee from the player's remuneration; however, this would not qualify as a benefit in kind (it is considered a simple technical/accounting assistance to the player).

  In practice, this may lead to a negotiation of an increase of the player's salary to cover the agent's fees, subject to PIT and to immediate withholding tax on its payment (which may, in turn, lead to the player also trying to negotiate its gross up).

  On the other hand, from a PIT perspective, the agent's fee paid by the player is not tax-deductible.

Portugal

Agent´s remunerations: The new FIFA Football Agent Regulation. Tax impact. (II)

- As clubs will no longer be able to pay the agent´s fees on behalf of the player, there will be no withholding tax issues arising from such payment since players are not usually required to withhold any taxes upon payment.

  Consequently, if there is no tax treaty in force, it may be mandatory for the agent to file a tax return in Portugal to declare this income and pay the applicable taxes.

- From a CIT perspective, clubs will no longer face discussions with the Tax Authorities on whether the payment of agent´s fees on behalf of the player should be qualified as an employment income and if it is subject to withholding tax, thus reducing their tax liability.

- Before the new FIFA Football Agent Regulation, dual representation was allowed without any service fee cap. Consequently, it was not unusual for the engaging club and the player to split the fees according to the proportion of the services provided to each party, and only the part of the fees paid by the club on behalf of the player could be considered as employment income.

  The new FIFA Football Agent Regulation continues to allow the dual representation; however, it sets out a maximum service fee which should be split 50/50. This means that, for example, if the agent is intitled to a 6% maximum fee, the club and the player will have to pay a maximum fee of 3% each, thus not allowing the engaging club to pay a higher proportion. Therefore, if the agent is intitled to the maximum fee, it is no longer possible to evidence that the part of the services provided to the club is higher in order to reduce the fees paid on behalf of the player and, consequently, the amount subject to PIT at the hands of the player.

Agent´s remuneration – Germany

Current situation

- No general typifying split like in other countries, the *circumstances of the individual case are decisive* (for wage tax and VAT); Discussions typically focusing on VAT.
- Clubs can deduct VAT input tax for services provided by a players' agent to the club. The possibility of input tax deduction depends on the agreements between the parties.
- The agreement of a service similar to that of a broker with the club is *required.* The club must request brokerage services from the agent, it is not enough for the club to negotiate with the player's agent because the player wants to be represented by the agent.
- German civil law generally permits dual activity. Possible violation of FIFA law is not decisive for tax classification. However, FIFA and DFB rules are an indication of the intended content of the agreements.

Agent´s remuneration – Germany

- Relevant is the agreement between player and agent
  - Contractual relationship between players' agent and player *without* consideration: VAT input tax deduction of the club.
  - If there is a fee-based contractual relationship between the players' agent and the player, which the club's payment has no influence on and the player pays the fee. => Payment by the club may only be made on its own account: VAT input tax deduction of the club.
  - VAT Input tax deduction is only possible to a limited extent if there is a fee-based contractual relationship between the players' agent and the player, but the remuneration of the club reduces (completely) the remuneration owed by the player. In these cases, only a proportionate (half) part of the input tax deduction for the club can be considered, because the club's payment of its own debt also extinguishes the player's debt at the same time => then partial remuneration from third party.
  - Problems if lawyers or family members act: Courts no VAT Input tax deduction, questionable.

Agent´s remuneration – Germany

- New developments regarding the new FIFA Football Agent Regulations
  - Regulations attacked by agents based on antitrust law.
  - In May 2023, a regional court ruled that players' agents may continue to handle transfers for the time being without the restrictions imposed by new FIFA's regulation, rules not in force.
  - The court argued that FIFA's decisions and the expected implementation by the DFB were likely to affect trade between EU member states. This constitutes a violation of the ban on cartels; in addition, the aim is to prevent, restrict or distort competition within the internal market.
  - Tax effects will be discussed with the German Ministry of Finance. Under German income tax law a player could deduct payments to his agent as income related expenses.

Payment of agents' remuneration – Italy

- In the past, the Italian Revenue Agency assessed several cases where the commission due to the agent was paid by the club rather than the athlete, by qualifying such payments as a *fringe benefit* granted by the club to the athlete, with the following consequences:
  - For the player: failure to declare taxable income for personal income tax purposes
  - For the agent: issuance of subjectively nonexistent transaction invoices (that could be criminally relevant)
  - For the club: (i) non-deductibility for corporate income tax purposes, (ii) non-deductibility of VAT shown on invoices due to lack of inherence, (iii) failure to make withholdings for IRPEF purposes on the portion of increased income from work and administrative penalty on the amounts not paid
- Such assessments were confirmed in their outcome by the Supreme Court (Cass. 7.4,2022 No. 11337)
- The new FIFA regulation, which will come into full effect starting from October 1, 2023, could have potential implications

Image rights

Lionel Messi Case - United States

Contract Details (Publicly Reported)

- Two-and-a-half-year deal (plus an option for 2026) with Inter Miami.
- Total of US$150 million which includes his salary, signing bonus, and an ownership stake/participation in management in the club upon his retirement.
- Inter Miami "brand ambassador". This allows Inter Miami to use Messi's image for promotional and marketing purposes, boosting the franchise's visibility globally. As a brand ambassador, Messi will participate in a certain number of promotional events and campaigns annually, increasing fan engagement and overall franchise value.
- Apple deal. Messi will receive a portion of new subscribers for Apple's MLS coverage. Also, Messi will be a "brand ambassador" for Apple. Reported as stock.
- Extension of Messi's Adidas sponsorship. Deal is enhances with additional requirements.
- Marvel Adidas jersey collaboration with Inter Miami.

US Tax Issues

- Timing of payments.
- Ordinary v. Capital Treatment. Potential to close out ordinary income treatment with an election such that subsequent appreciation is capital.
- Deemed or Actual US partnership.
- Treatment of different types of consideration – cash, stock, options, future payments (with and without contingency), etc.
- Transfer pricing on image rights.
- US state tax nexus.
- Worldwide income taxation

Italy – Cristiano Ronaldo's Case (Case 219-2023 Reg. Court of Piemonte) 1/2

Background:

- Ronaldo moved to Italy in 2018 and opted for the "neo-residents" tax regime
- The footballer submitted a tax ruling to the Italian Revenue Agency asking for the correct qualification, and the related territorial criteria, for income derived from the economic exploitation of personal image rights (not managed by the Italian club)
- With no clear response from the Italian Revenue Agency, Ronaldo taxed all income from image rights usage but later sought a refund. After not receiving a response to his refund request, the footballer initiated legal proceedings, arguing as follows:
  i. income from granting commercial image usage rights should be classified as income from the economic exploitation of intellectual property or, alternatively, occasional self-employment. In both cases, this income should be considered as produced in the payer's Country of residence;
  ii. income arising from commitments to perform specific personal activities requiring the footballer's physical presence and time should be viewed as assimilated to employment income produced in the payer's residence territory, or, alternatively, as self-employment income sourced in the location where the activities occurred

Italy – Cristiano Ronaldo's Case (Case 219-2023 Reg. Court of Piemonte) 2/2

Judicial decisions:

- Both the first-instance ruling by the Provincial Court of Turin and the second-instance ruling by the Regional Court of Piedmont rejected the footballer's appeal
- The Regional Court of Piemonte affirmed that the income in question classifies as self-employment income (as requested by the Revenue Agency). Indeed, they cannot be treated i. as intellectual property rights, ii. income from employment, or iii. income from a self-employed activity not performed professionally
- The Judgment held that the income should be considered produced in the place the image rights were managed and, in the specific case at stake, such place was determined to be the footballer's country of residence (Italy), as he failed to provide convincing evidence that the income was derived from activities conducted abroad
- **The outcome of the Judgment is questionable considering that – in the absence of different evidence – at least an apportionment based on days spent (in Italy vs. abroad) should have probably been considered (as per other rulings released by the Agency)**

Italy – The use of «star companies» and the risk of interposition: Ruling No. 282/2022

The Facts

- UK corporation incorporated under UK law and ordinarily subject to corporate tax;
- Incorporated by a sportsman, at the time of incorporation resident in the UK, and then transferred to Italy;
- The company was administered first by the shareholder and then by his mother,
- The company was a pure holding company owning the rights of economic exploitation of the shareholder's image and sponsorship rights (to which nothing is paid for the exploitation of such rights)

The Ruling of the Revenue Agency

- The company was to be considered disregarded for Italian tax purposes and the income of the same company was subject to tax in the hands of the shareholder. The corporate income tax paid in the UK was creditable only limited to taxes produced in the UK

Critical elements

- The consistency of the corporate vehicle with the intended economic objectives
- The presence of an organizational-managerial structure capable of causing the company to be considered a separate economic entity from its shareholders
- Relationships between the shareholder and the company regulated at arm’s length

Portugal

Rules of allocation of remuneration (salaries/image rights) (I)

- Splitting is possible. There are no specific rules of allocation of remuneration. However, there are some particularities.
- If the player transfers its image rights to the Club with which he/she has an employment contract, the Tax Authorities uphold that the income arising from such transfer is qualified as employment income, subject to progressive tax rates up to 53%. This understanding is questionable: image rights may not be strictly connected with the employment agreement, in which case the tax treatment should not be the same.
- If the player transfers its image rights to other entity other than the Club with which he/she has an employment contract, the income arising from such transfer is qualified as capital income, subject to a special PIT rate of 28% - This understanding from the PT Tax Authorities is highly questionable – it could be qualified as business income, also subject to progressive tax rates. Transfer pricing rules may apply!
- When the image rights are held by a nonresident entity, and then subsequently transferred to a Portuguese Club that has or will enter into an employment agreement with the player, The Tax Authorities uphold that the income obtained by the nonresident entity is taxable in Portugal – WHT of 25% - and also that this WHT cannot be waived under a DTT because it is covered by article 17, paragraph 2 of the OCED Model Convention.

  This interpretation of the PT Tax Authorities has already been refused by the PT Courts. There is no connection between the image rights and the employment agreement that allows to uphold that such image rights are related to the personal activity exercised by the player in Portuguese territory.

Portugal

Rules of allocation of remuneration (salaries/image rights) (II)

- What if the entity that acquired the rights is related with the Club that has an employment agreement? It should be evidenced that the charges incurred are adequate in face of the profits generated through the commercial exploitation of the image rights, otherwise Tax Authorities may try to apply the GAAR.

- What if the player transfers its individual image rights to a company owned, directly or indirectly, by him or a related person ("star company"), which, in turn, subsequently transfers such rights to a Portuguese Club that has or will enter into an employment agreement with the player? Transfer pricing rules are applicable.

  Could the tax authorities requalify the income paid to the entity owning the image rights as employment income obtained by the player? If the entity exploiting the image rights fails to meet the economic substance test (i.e. is it not justified by economic reasons and do not result in any significant economic effect other than the tax benefit) the Tax Authorities may try to apply the Portuguese GAAR in order to requalify the transaction.

Portugal

Compensation structures (star companies) - The Fernando Santos (former Portuguese National Coach) case – *Background (I)*

- Fernando Santos ("FS") was announced as the Portuguese National coach on 23, September 2014;
- Previously, on 14, January 2014, FS incorporated a company, initially fully owned by FS and afterwards by FS and his wife;
- On 23, October 2014, the Portuguese National Football Association ("FPF") entered into a services agreement with the FS company, which foresaw the following:
    i. FS company undertakes to provide technical supervision and coordination services for all National Teams, including guidance and preparation with a view to qualifying the National Team for the UEFA Euro 2016 and guidance and preparation during the final stage;
    ii. FS company undertakes to rely on a technical team specifically identified in the agreement, guaranteeing their availability, which included FS and his assistants.
- On 21, July 2016, the FS company entered into an image rights transfer agreement, covering the image rights of FS, with FPF;

Portugal

Compensation structures (star companies) - The Fernando Santos (former Portuguese National Coach) case – *Background (II)*

- Also on 21, July 2016, FPF entered into another services agreement with the FS company, with a view to qualifying the team for the FIFA World Cup 2018 and UEFA Euro 2020, and guidance and preparation during the final stages;
- All cost with travels, accommodation, training camps, equipment and other logistics was borne by FPF;
- In 2016 and 2017, the amounts paid to FS Company were subject to CIT at a rate lower than that which would result if that income had been subject to PIT at the level of FS;
- The Tax Authorities upheld that there was an artificial interposition in the provision of services by a commercial company, which does not have economic substance or valid commercial reasons, and which served prominently to obtain during the tax period a more favorable CIT taxation compared to that which would result from the taxation of the same income in terms of PIT, which is covered by the GAAR, and, therefore, disregarded FS Company and assessed PIT to FS;
- FS challenged the PIT assessment before the Tax Arbitration Court.

Portugal

Compensation structures (star companies) - The Fernando Santos (former Portuguese National Coach) case - *Grounds presented in Court by FS (I)*

- There was no tax advantage because the sum of the statutory rates of the CIT and PIT tends towards indifference, towards neutrality. Although the CIT rate is lower than the PIT rate, dividends distributed by a company will subsequently be subject to PIT.
- The supply of services through FS Company was imposed by FPF, which intended to ensure the contribution of different people and, at the same time, to only have an agreement with one entity, which would be responsible for hiring the technical team, to mitigate the contractual risk (of maintaining the relationship) and prevent future disputes. Such conditions, made the legal structuring and provision of services directly and personally by FS difficult, inappropriate and complex, and, therefore, the recourse to a company constituted "*a perfectly legitimate and rational option from an economic point of view and from the management of the interests of the parties involved*".
- From FPF point of view, a company was more convenient since it did not want to run the risk of, if the contract ended before its expected end, having to negotiate compensation with the different members of the technical team.
- There was no obstacle to this proposal from a regulatory nature, since there was no regulatory provision in sports matters (national and international) that prevented the hiring of a technical person responsible for the national teams through a company.

Portugal

Compensation structures (star companies) - The Fernando Santos (former Portuguese National Coach) case - *Grounds presented in Court by FS (II)*

- The technical staff that provided the services to FPF was expressly mentioned in the contract, however, this mention did not represent any choice, imposition or condition on the part of FPF because it was allowed to FS Company to choose, hire, set deadlines, remuneration conditions, in relation to the staff (FPF did not even know the contractual conditions agreed between FS Company and the staff).
- FS could provide his services individually or through a company, and – as with most professionals – his choice is eminently free, considering the right to private initiative and freedom of conformation of business or professional activities", although, in the specific case, this freedom of choice of means was strongly limited by the intentions and demands of FPF.
- The transactions carried out by FS were not tax driven: they were not essentially or mainly aimed at the reduction, elimination or deferral of taxes that would be due as a result of facts, acts or legal transactions of identical economic purpose, or to obtain tax advantages that would not be achieved, in whole or in part, without using these means.

Portugal

Compensation structures (star companies) - The Fernando Santos (former Portuguese National Coach) case - *Decision of the Court (I)*

- The Arbitration Court ruled that, in order for the GAAR to apply, the following elements should be present:
  a) The means element - which has to do with the form used, therefore, with the execution of certain acts or transactions aimed, essentially or mainly, at the reduction, elimination or deferral of taxes;
  b) The result element - which aims at the tax advantage as the purpose of the taxpayer's activity, therefore, the reduction, elimination or deferral of taxes;
  c) The intellectual element - which has to do with the taxpayer’s motivation, therefore, with the fact that the acts or transaccions carried out by the taxpayer are essentially or mainly aimed at the result, which is the tax advantage;
  d) Normative element - which has to do with the normative-systematic disapproval of the advantage obtained, therefore, the taxpayer acts with manifest abuse of legal forms.

Portugal

Compensation structures (star companies) - The Fernando Santos (former Portuguese National Coach) case - *Decision of the Court (II)*

- The **result element** is present since the same supply of services would have been subject to a clearly higher tax burden if the tax, instead of being determined in the sphere of FS Company, based on the CIT rules, had been determined directly and personally in the legal sphere of FS, based on the PIT rules. Regarding the claim of FS that the company will certainly distribute dividends in the future, subject to PIT, the Court ruled that (i) there was no distribution of results in the years in question, (ii) the results may remain within the company without ever being distributed to the partners (iii) those results could eventually be applied to other different corporate developments without generating a future return that would allow for their distribution and also that (iv) the possibility of an eventual and future distribution of results is, in itself, a tax advantage for the purposes of applying the GAAR, as it allows a "deferral of taxes", as taxation would be deferred to the moment when FS, as majority shareholder, considered it convenient, namely in consideration of the tax framework then in force.

- The **means element** is also present since FS failed to evidence that the supply of services and the transfer of image rights through the corporate structure was imposed by FPF, although, even if this had been evidenced, that would not allow justifying, according to a standard of economic-commercial reasonableness, the necessary and indispensable supply of the services through a company.

Portugal

Compensation structures (star companies) - The Fernando Santos (former Portuguese National Coach) case - *Decision of the Court (III)*

- The composition of the technical staff was immediately pre-determined by FPF and subject to a regime of exclusivity, with the supply of services only being able to be carried out by other people if FPF granted prior authorization for this purpose. Thus, despite the contracts having been formally signed with FS Company, what results from them, in essence, is the contracting of personal and non-transferable services.
- The structure of the legal transactions highlights a clear confusion and inseparability between the personal and corporate spheres.
- Except for the personal and individual qualities of FS, FS Company did not have an adequate human and material structure to provide the services hired by FPF, not to mention that its financial structure was also unable to support the supply of services.

Portugal

Compensation structures (star companies) - The Fernando Santos (former Portuguese National Coach) case - *Decision of the Court (IV)*

- The alternative legal transaction with equivalent economic effects, that is, the direct and personal hiring of FS by FPF, would have achieved exactly the same purpose of mitigating the contractual risks. In fact, it would be enough to replace FS Company with FS in the contracts signed with FPF and with the companies of the other members of the technical staff, maintaining all the clauses and functional dependence, to ensure the binding of the FPF to a single entity.
- The **intellectual element** is also present since, under the rules of logic and experience, it does not seem likely that, in the legal structuring of the operation, FPF and FS did not consider or weigh in any way the convenience and tax advantage resulting from the contractual model adopted, especially in view of the insufficiency of the remaining non-tax reasons that allegedly determined the structuring of the operation.
- The **normative element** is also present since FS used a structure with no valid economic and business reasons, thus, artificial and abusive, with the prominent objective of obtaining a tax advantage, which implies that the behavior in question is anti-legal and deserves normative-systematic disapproval.

Foreign Image rights company (IRC) - Germany

- Split (employee sphere - own commercial sphere of a player)
  - Advertising activities and the grant of image rights to the club are considered part of the employee's activity (therefore no split, subject to wage tax). The DFL's German model employment contract contains an obligation under employment law to advertise for the club as a rule; however, in a lot of cases it is negotiated that the player is entitled to market his shoes himself (own sphere). The own commercial sphere also includes advertising partnerships with third parties outside his capacity as a player.
- Recognition of the IRC in German tax law:
  - If the company does not have sufficient substance and serves solely to pass through income, it is ignored for tax purposes (disregarded company). Also partnerships may be disregarded.
- Tax issue: Place of management of IRC
  - The place of management of the company must not be in Germany, otherwise the IRC will be subject to unlimited tax liability in Germany. Problem: Player as factual Managing Director.
- Tax issue: Limited tax liability of the IRC
  - If IRC is recognized and non domestic: limited tax liability of the IRC in Germany on income of German appearances and closely connected income (e.g. wearing shoes in a German match); German WHT on payments of a sponsor to the IRC (Foreign-based remuneration debtors must also withheld German WHT).

Foreign Image rights company (IRC) - Germany

- Tax issue: Foreign Transaction tax act
  - Internal relationship between player and ICR:
    - The player grants his rights on the basis of a license agreement or without consideration: Transfer pricing control; the ICR is only entitled to a handling fee (arm's length principle)
    - The player has permanently contributed his rights to the company on the basis of a contribution (ICR owns the IR rights)
  - CFC-Rules
    - If the IRC is taxed on a low basis (currently less than 25% on its overall income applying German tax rules) and the income is considered passive income (which is likely), all income of the company will be taxed in Germany with the individual tax rate of the player (the tax of the company would be credited)

Image Rights in Spain:

- Spanish Personal Income Tax Act (85/15 rule).
- Limitation of payments made from a Club to an Image Rights Company (IRC) is equal to 15% of the entire remuneration package.

Anti Tax Evasion Rules:

- The IRC cannot be located in a low-taxation territory;
- The IRC and the image rights contract between the player and the IRC were not set as structure to levy taxes on the agreement with the player and the club – time line;
- Consistent payments made by the IRC to the player;
- The company cannot be a simple legal entity – it requires certain infra structure.
- Business consistency!

Image rights x salary – Brazil

- Controversy regarding the transfer of athlete's image rights to a legal entity (i.e., personal star company or club) responsible for their exploitation;
- Several tax assessment issued by the federal tax authorities disregarding such transfer and levying personal income tax as if the amounts received by the company had the nature of athlete salary;
- Pelé Law (Law 9,615/98) altered in 2015 to expressly allow the assignment and transfer of image rights, limited to 40% of the total amount of the contract (art. 87-A, sole paragraph);
- General Sports Law (14,597/23) – threshold raised to 50% (article 164, second paragraph);
- Such rules provide legal certainty and should positively impact the case law.

Residency and Taxation

Italian "Impat" Tax Regime ½ - Italy

Background:

- As for contracts in place on May 21, 2022, all professional sportsmen can benefit from the "impat" regime although with certain limitations
- New regime introduced in 2022: for contracts in place as of May 22, 2022, only certain professional sportsmen are eligible for the "impat" regime

Tax Benefit:

- 50% tax exemption on income from a sports employment contract (the Italian tax agency clarified that the exemption includes income from the sale of image rights and advertising activities, provided they are paid within the framework of the sports employment contract with the same employer)
- 5 years, renewable for an additional five years for athletes with at least one minor or dependent child, even in pre-adoptive custody, or in the case where athletes become owners of at least one residential property in Italy, after the transfer to Italy or in the twelve months preceding the transfer
- The athlete is however required to make an annual contribution equal to 0.5% of the taxable base

Italian "Impat" Tax Regime 2/2 - Italy

Who Does It Apply To:

- Age 20 or older in the first fiscal year of residence in Italy (younger players are not eligible for the tax benefit)
- Not been tax residents in Italy in the two tax periods preceding the acquisition of the Italian tax residence and commitment to maintain the Italian tax residence for at least two fiscal years
- Primarily carry out their work activities on Italian territory (i.e. more than 183 days per year), including trips abroad for international competitions, even if not remunerated by the employer
- Minimum income threshold:
  - €1,000,000 for sports federations with professional status before 1990 and certain sports (football, cycling, golf, basketball);
  - €500,000 for sports federations with professional status after 1990
- Players with lower income are not eligible for the tax benefit

New-residents Tax Regime - Italy

Background:

- Tax optional regime available since 2017 (alternative to the "Impat" regime), for any taxpayer (including sportsmen)

Tax Benefit:

- Payment of a substitute tax in the amount of €100,000 for each tax period in which the option is valid, in lieu of any taxation applicable on foreign source income and foreign assets

Eligible Income:

- Any foreign-source income (except for capital gains deriving from the sale of qualified shareholdings realized within the first five tax periods of the option's validity)

Requirements:

- Not to have been a resident in Italy for at least nine out of ten last tax periods

Duration:

- Fifteen years, not renewable

"Impat" vs New-residents for Athletes - Italy

Income	"Impat"	New-residents
Employment income (including exploitation of image rights managed by the club) related to activities performed in Italy	• 50% tax exemption (effective taxation up to about 22.5%)	• Ordinary regime (effective taxation up to about 45%)
Employment income (including exploitation of image rights managed by the club) related to activities performed outside of Italy	• 50% tax exemption (if paid by the same Italian employer and referred to international trips)	• NA (covered by the Flat tax)
Exploitation of image rights and sponsorships	• If managed by the sportsman, ordinary regime (effective taxation up to about 45%)	• To be determined the Country of source (see Ronaldo's case) • If sourced in Italy: ordinary regime (effective taxation up to about 45%) • If sourced abroad: NA (covered by the Flat tax)
Other non-Italian income (for instance, financial income)	• Ordinary taxation (financial income subject to 26%)	• NA (covered by the Flat tax)

Club is the «actual» beneficiary

New-residents regime might be more interesting for the sporstmen

Timing of payments - Germany

- No special rules.
- Moving into and out of Germany is done for income tax purposes on a daily basis in a calendar year (this applies to unlimited income tax liability and residency under Treaty law). The move-in and move-out year is therefore splitted into a period of unlimited and limited tax liability.
- If advance payments from a new employment relationship (e.g. signing fees) in Germany accrue before departure, this income is still subject to unlimited tax liability in Germany (with the consequence that the world income principle applies). Under the DTT the income is attributed to the new activities. However, since the player is still resident for Treaty purposes in a lot of cases, the tax credit method applies to the corresponding income from sports activities (Art 17 DTT).
- Similar effects occur in the case of additional payments after moving in from abroad.

Investments in Clubs and Sport associations

Sociedade Anônima do Futebol (SAF) – Brazil

- SAF's legal framework – Law n. 14,193/21;
- Enables transparency, corporate governance, professionalization, restructuring and financial survival of Brazilian football clubs;
- Transition from associative and non-profitable model to lucrative business model;
- SAF receives the transfer of football-related assets (such as rights over players, broadcast and sponsorship contracts etc.).

SAF's specific tax regime

- Non-profit football associations are exempt from federal taxes (IRPJ, CSLL and Cofins);

- SAFs are not exempt, but have a Specific Tax Regime

  - Articles 31 and 32 of Law n. 14,193/21.

SAF's specific tax regime

- **First 5 (Five) years following SAF's incorporation:**

➢ Unified collection of several federal taxes (IRPJ, CSLL, PIS, COFINS and labor social contributions);

➢ Tax rate of **5% (five per cent)** over monthly revenue ascertained (cash basis);

➢ Revenue derived from the transfer of athlete rights **excluded** from the taxable base

- **Sixth year after SAF incorporation onwards:**

➢ Tax rate of **4% (four percent)** over monthly revenue ascertained (cash basis);

➢ Revenue derived from the transfer of athlete rights **included** in the taxable base.

SAF's specific tax regime

- There are several taxes not encompassed by the Specific Tax Regime, which shall be levied in accordance with the general legislation applied to legal entities:
  - Municipal services tax (ISS);
  - Income tax on gains arising from financial applications;
  - Income tax on capital gains arising from the sale of equipment/assets;
  - Tax on Financial Transactions (IOF);
  - Severance Pay Fund (FGTS).

Taxable base

- Article 10:

  - SAF is legally obliged to transfer 20% of its the monthly revenues to the club, as well as 50% of dividends and interest on own capital (JCP);

  - Such amounts are mandatorily used to pay off club's debts in the Centralized Execution Regime (RCE);

- Exclusion of such revenues from company's taxable base?

SAF incorporation

Forms of SAF incorporation (article 2):

- Transformation of the association into a SAF (article 2, line 1);
- Spin-off of "club's football department" (article 2, line 2);
  - ➢Poor legal wording;
- SAF originally incorporated by natural person, legal entity or investment fund (article 2, line 3).

SAF incorporation

- Drop down of assets is not mentioned in article 2, which lists admissible forms of SAF incorporation;

- Drop down is provided for in article 3, which sets forth that the club may transfer assets (such as name, trademark, symbols, immovable and movable assets, licenses, sporting rights, athlete rights etc.) to contribute to SAF's corporate capital;

- Despite of not being mentioned in article 2 (legislative mistake), drop down has been the most adopted form of SAF incorporation.

SAF incorporation

Bill of Law n. 2,978/23 – Improvements:

- More technical wording for article 2, line II (spin-off):
  - Current wording – Spin-off of the department of football;
  - New wording – Spin-off of the club and transfer to the new SAF of the split up net equity related to football activities;
- New article 2, line IV, with the purpose of expressly including drop down amongst the listed forms of SAF incorporation;
  - Criticism – Restrictive wording according to which SAF will mandatorily be a fully-owned subsidiary of the club.

SAF Liability

Bill of Law n. 2,978/23 – Clarifies that SAF is not liable for club's obligations:

- Article 2 – Inclusion of paragraph 7 – "The incorporation of a SAF **does not imply the existence of an economic group** between such SAF and the football club".

- New wording for article 9 – "SAF is not liable for club's obligations, undertaken before or after its incorporation date, **except in what refers to the obligations expressly transferred by the club in the corporate documents**."

  - Current wording is broader and unclear – "(…) except in what refers to the specific activities of its corporate object and obligations transferred "

- Article 10 – Inclusion of the expression "exclusively and fully":

  - "The club is **exclusively and fully** liable for the payment of the obligations undertaken before SAF incorporation (…)"

SAF Liability

National Tax Code – Article 132 – Legal entity resulting from spin-off is liable for taxes due until the date in which the spin-off occurs;

- Such article does not apply to drop down, because such operation is economically and legally different from a spin-off:

Spin-off	Drop down
Both the share capital and net equity of the original company are reduced	The share capital and the net equity of the company remains unaltered
Creditors may disagree in 90 days	Creditors do not have such prerogative

- JBS Case – CARF Ruling n. 1301-006.303, tried in March 2023

Portugal

Succession of associations´ tax liabilities by legal entities incorporated to explore football activity

- Portugal has recently approved a new legal regime applicable to Sports Public Limited Liability Companies (Law 39/2023, 4 August);
- Such Sports Public Limited Liability Companies could be incorporated *ex novo*, result from the conversion of the club/association or from the legal personalization of a team belonging to a club;
- Tax liabilities may only be automatically transferred further to the conversion of the club/association into a Sports Public Limited Liability Company;
- If the Sports Public Limited Liability Company is incorporated *ex novo*, it is jointly liable with the founding Club for any tax liabilities already existing at the time of the transfer of assets and liabilities from the Club to the Sports Public Limited Liability Company, up to the limit of the assets transferred.

League Taxation - United States

- Sports teams are taxable entities, but many leagues may be tax exempt entities (NHL, PGA, MLB, and NFL). Many of these organizations' league offices, which handle the administrative functions of a sport, qualify as tax-exempt.
- During the summer of 2018, the Senate introduced the Properly Reducing Overexemptions for Sports Act "to eliminate the nonprofit status for the league offices of professional sports organizations."
  - The act was aimed to eliminate this tax provision for any organization, although it specifically named the NHL, PGA, and LPGA. The operations of these three leagues generate a combined $1 billion in total revenue.
  - This bill to amend did not pass.
- In 1966, the IRS grouped football leagues with trade associations under section 501(c)(6) because, like trade associations, the leagues "act on behalf of their members."
- The NFL, however, dropped its tax-exempt status in 2015; the MLB did so in 2007; the NBA was never tax-exempt.
  - Continued qualification challenges.
  - Restrictions on operation.
  - Public perception.

Italian Serie A Television Rights Distribution - Italy

- Television rights for Italian Serie A are owned by both the competition organizer ("Lega Calcio") and participating clubs
- Lega Calcio has exclusive economic utilization rights and offers these rights to operators across various platforms through competitive processes, ensuring no single operator acquires all rights
- License contracts have a maximum duration of three years
- At least 40% of revenue is distributed equally among all participants, with an additional 30% distributed based on sporting results achieved and another 30% allocated according to the viewer demographic
- Of the 30% related to sporting results, 10% is determined based on each team's performance since the 1946/47 season, 15% based on the results of the last 5 seasons, and 5% based on the outcome of the last competition. Within the 30% related to viewer demographic, 25% is determined based on the number of supporters for each team, and 5% based on the population of the municipality of residence
- 2022: potential sale to PE investors of television rights prior to contribution to a Newco (afterwards aborted)

Investments in Clubs and Sport associations - Germany

- Originally, soccer clubs in Germany were organized as non-profit sports clubs. The professional team is a taxable economic sphere of the non-profit association (corporate income tax and trade tax).
- Before an investor becomes involved, the business has generally spun off into a corporation. A special feature under German association law is that, under the 50+1 rule, investors may not acquire a majority of the votes in the corporations to which the soccer clubs have outsourced their professional teams. At least 50% of the voting shares plus one vote must remain with the clubs. Model accepted by antitrust authorities.
- For tax purposes, it must be ensured in the case of a spin-off that hidden reserves are not realized at the level of the transferring association. German reorganization tax law requires that businesses or parts of businesses be spun off together with all essential business assets.
- In addition, funds raised via bonds (partly fan bonds), mezzanine instruments such as profit participation certificates or silent partnerships.
- Sports federations (organized as associations) are also currently looking at taking on investors to raise capital to invest in business. In this respect, however, the focus is less on spin-off models and more on long-term licensing models.