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Global Sports Law & Taxation Reports

Contents

2018/12 A fresh look at the Olympic Properties

2018/13 Comparative tax approach of major European leagues

2018/14 Belgium: International transfers of professional football players

2018/15 Switzerland: International transfers of professional football players

2018/16 Sponsorship and endorsement agreements of sportspersons: recent findings on income qualification under tax treaties and territoriality rules

2018/17 The CAS landmark decisions of 1 February 2018 and subsequent CAS rulings on the Russian winter sport "doping cases"

2018/18 Reappraising the relationship between law and sport: contemporary questions and issues. Part one

2018/19 Germany: Taxation of internationally working referees

2018/20 Is your international sporting federation skating on thin ice too? International Skating Union breaches EU competition rules

2018/21 The end of like-kind exchanges for U.S. sports trades. A fundamental change of the professional sports landscape under the 2017 U.S. tax reform?

2018/22 Sports celebrities: valuing their image

NOLOT

9·2

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Comparative tax approach of major European leagues

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Introduction

As long as the sports industry is becoming more popular and more relevant for the economy of the countries and their gross domestic product, there is a new strategy of the different states to introduce attractive tax measures in order to promote the arrival of foreign players. In this sense, a tax competence may be observed between EU major leagues.

This approach is generalized, some countries, such as United Kingdom, has historically ventured strongly into this affiliation between tax incentives and expatriation. Others, such as Italy, France or Portugal, are working hard during the last years introducing different tax measures with high implications from a tax perspective.

However, and as we will see later, this generalized approach is not followed by all major leagues, as countries like Spain have decided to eradicate its main tax advantage ("impatriate tax regime").

In this article, we describe shortly the main measures of the different countries and how they operate with different tax issues such as the residence, image rights or agency fees3.

Spanish tax regime

Impatriate tax regime

Some years ago, Spain had a favorable tax regime for foreign players that came to Spain to develop their activity. The "inpatriates" tax regime, so-called also "Beckham Law" (since David Beckham was one of the first players who could enjoy this regime), allowed the individuals that came to Spain because of a labor contract to be taxed as non-resident, which meant:

- being taxed only on their Spanish-source income. Tax residents in Spain were and are taxed on their worldwide income.
- lower income tax rates on their salaries from the Spanish club. Non-residents paid taxes at a rate around 24% (depending on the tax year). However, tax residents in Spain paid taxes at a rate around 45%.
- the regime could be applied the first year of the Spanish tax residence and the subsequent five years.

The main requirements to apply this regime were the following:

- the player should not have been tax resident in Spain in any of the ten tax periods preceding his transfer of residence to Spain.
- the displacement to Spain should derive from a labor contract with a Spanish employer or the displacement to Spain should have been ordered by the foreign employer.
- the works should be carried out in Spain. This requirement would be fulfilled if the player perceives no more than 15% of the total labor income from abroad.

However, in 2010, an amendment to the regulation of the "inpatriates" tax regime limited its applicability, because it was capped to individuals that earned no more than 600,000 euros per year. Considering that, average/top foreign players that came to Spain after the amendment were excluded from the regime. Nevertheless, the players that came to Spain before the limitation (i.e. Cristiano Ronaldo) could keep on with the regime until its expiry date.

In 2015, a new amendment was made to the "inpatriates" regime: sportspeople were excluded from the scope of the regime. Therefore, this advantageous regime does not exist anymore in Spain for players that come to Spain.

Image rights

Historically and in some cases, the image rights have been used to pay the players with a lower tax cost avoiding its qualification as an employment income. Afterwards and to avoid such scheme, the Law 13/19964 introduced

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3 Due to the complexity of the subject and the different tax issues derived from each issue and country, the present article describes shortly each item.

4 Ley 13/1996, de 30 de diciembre, de Medidas Fiscales, Administrativas y del Orden Social.

a limit on the payments from clubs to companies. In this sense, such Law established that the club would not pay more than 15% of the total remuneration paid to the player due to the image rights. In case such limit is broken, the entire amount paid by the club to the player or company would be considered as an employment income and consequently subject to taxation at the highest tax rate.

Nowadays, and even though such limit is respected, those companies are under enquiries by the Spanish Tax Authorities (STA). STA are considering that:

- in many cases, those companies are instruments to avoid taxation and allocate income into a corporate level (lower than personal level);
- those companies do not have considerable economic activity;
- due to the transfer pricing rules, the entity shall pay to the player the market value of the assignment of the image rights. In this sense, the market value would be constituted by the money paid by third parties (i.e., club or sponsorship agreements) to the company and deducting only the expenses linked with the exploitation of the image rights.

At the end of the road, the income obtained by the company, even if is under the limit of 15%, shall be allocated into the individual (highest tax rates between 43% and 52%, according to the corresponding autonomous community or region) because of the application of the transfer pricing rules.

It would be necessary to observe the application, in each case, of the mechanism of double taxation for companies and individuals.

Agency fees

It is well-known in the sports sector that, when the players are part of a transaction or want to renew the contract with their club, they, in most of the cases, are represented by an agent in the negotiation with the club. This agent, with his client's acquiescence, agrees with the club the amounts to be paid to the player and, for his intervention, receives a certain fee. Traditionally, these fees were paid by the club directly to the agent.

In recent years, the STA have considered that, as the player is the client of the agent (not the club), he is the one entitled to proceed with the payment. Therefore, if the club is the one that pays the agreed fee, the club must treat it as a benefit in kind and, therefore, apply the corresponding withholding. Practically, this increases the cost of the agency fees to be paid.

The STA follows the more burdensome interpretation for the players, because if the agency fees are considered as the player's salary, and therefore taxable in Spain, they should be considered as well as a deductible expense of the salaries received by the player (because the funds end in the agent's bank account and these fees are directly and strictly related to the player's salaries).

Nevertheless, the STA does not consider the agency fees as a deductible expense for the player. Spanish tax regulations only allow certain expenses and certain amounts as deductible expenses of salaries income, and agency fees are not included in the list.

Competitive tax regimes

United Kingdom

The remittance basis allows the non-domiciled (non-dom) to be taxed only on the UK income and capital gains. The foreign income would be taxable in UK (highest tax rate 45%) if it is remitted there (remittance basis principle).

In this sense, the remittance basis is free for the six years of residency. After that, the taxpayer would be subject to an annual charge of £ 30,000 (if the taxpayer is resident for 7 of the last 9 years); £ 60,000 (in case of residence of 12 of the last 14); and £ 90,000 (if residence in 17 of the last 20).

Regarding image rights, HMRC published a guide about the tax treatment of the image rights. In this sense, HMRC indicates that:

- image rights companies may license the use of an individual's image to commercial partners, including the individual's employer (if they have one), in return for image rights payments;
- where payments are made to an image rights company resident in the UK, the company will pay UK corporation tax on its profits;
- where the individual is a director or shareholder of that company, they may receive a financial reward, such as salary or dividends, in the same way as any other company director or shareholder. This income is subject to tax in the normal way.

After extensive discussions it seems that clubs, advisers and HMRC have allowed clubs to treat up to 20% of the salaries paid to players as a payment for the use of their image rights under certain requirements.

Concerning agency fees, the tax burden would depend upon to whom the services are rendered. In this sense, if services are rendered on behalf of the club, no tax charge would arise for the player. However, if services are rendered on behalf of the player, such fees paid by the club to the agent would be considered as a benefit in kind for the player and, consequently, subject to taxation into his personal income tax return. If services are rendered for both (player and club), it would be necessary to analyze each case.

France

France has an attractive special regime that sportspeople may benefit from.

Ordinary French tax residents are taxed in France at a marginal rate around 45%. Also, ca. 20-23% (capped to 10% for gross monthly salaries above € 13,000) of the gross income is payable as employee social security

taxes. Employer social security taxes (which are not reflected in the employment agreement) are computed on the gross income at a rate of circa 30% (capped to circa 24% for gross monthly salaries above 13,000).

Nevertheless, the inpatriates tax regime provides the following benefits.

- Inpatriation premium received by the employee in France is fully exempted for income tax purposes. This inpatriation premium should meet the following requirements:
  - employees sent on assignment to France by their foreign employer or recruited directly overseas by French companies to occupy a position in France;
  - the individuals must be French non-resident for tax purposes at the date of recruitment and for the past five years.
- The exemption that may be applicable are the following:
  - exemption applicable to the inpatriation bonus, covering the costs incurred with respect to the settlement in France, mostly assessed on a flat-rate basis in the employment agreement (option for a 30% of the gross income lump sum available to individuals directly recruited from abroad);
  - exemption applicable to the fraction of salary corresponding to the activity performed for the French club abroad;
  - exemption applicable to 50% of foreign passive income (dividends, interest, royalties and gains) derived by the player.
- The compensation to be received by the individual, excluding the inpatriation premium, should be equal or higher to the compensation received by other employees in equivalent positions to the same employer.
- The inpatriation premium (i.e. actual costs or up to 30% of the net remuneration for individuals directly recruited abroad) may be treated as an inpatriation bonus and may be exempted from income tax.
- The part of such remuneration linked with work developed outside France for the French employer would be fully exempted for income tax purposes.

The amount of the exempted income is limited to the following:

- the total exempt income pursuant to the Inpatriates Tax Regime shall not exceed 50% of the gross income;
- a 20% ceiling applicable to the salary fraction corresponding to the activity performed abroad decreased by the inpatriation bonus.

Regarding an agent's remuneration, if the agency fees are paid by the club on the player's behalf, it should be considered as salary income for the player. Therefore, the income would be taxable in France for personal income tax and social contributions purposes. Nevertheless, the agency fees paid should be deductible for the player for personal income tax purposes, being the social security contributions due. Therefore, there is no tax effect for the player, except from social security contributions.

Regarding image rights, France is working on a new law that may allow separate sports image rights agreements with employers in France. However, this law is not applicable yet, so we cannot offer precise conclusions about an eventual advantageous image rights regime.

Italy

From 2017, Italy has introduced a new tax regime for those who become Italian tax residents. The main idea of the tax regime is to attract high net worth taxpayers and to introduce a competitive tax regime in line with the non-domiciled tax regime applicable in Portugal (see later), UK or Malta.

Those (Italian or non-Italian citizens) may be opted if the individual has not been tax resident in Italy during 9 of the last 10 years. Generally, the Italian tax resident is subject to taxation following the worldwide basis, including the Italian and non-Italian source income. Those taxpayers incorporated under this tax regime may opt to change the income obtained abroad for a fixed payment of € 100,000. This tax benefit would not include the capital gains or qualifying holdings in the corresponding first 5 years of the election.

The tax regime would be applicable for 15 years unless the request by the taxpayer or non-payment of the € 100,000 substitutive tax.

Regarding the agency fees paid by the club to the agent on behalf of the player, the Italian tax authorities consider that such amount would be treated as an employment income and, consequently, taxable for the player. The player would not deduct such payment from his personal income tax return.

Image rights companies are not being accepted by the Italian tax authorities and, in those cases, the amount paid to the corporate is being considered as an employment income for the player.

Germany

In Germany, there is no special tax regime for sportspeople that arrive in Germany. If an individual has a domicile or a habitual abode in Germany, he will become German tax resident and, therefore, pay taxes in Germany for his worldwide income. Considering that, the double taxation treaties may be the only "tool" to limit German taxation rights. In some tax treaties, Germany grants the exemption of the foreign income, but considering the income for the applicable tax rate (progression provision).

Regarding agency fees, German tax authorities consider that the agency fees paid by a player to his agent should

be tax deductible in Germany for a German tax resident, assuming they are connected to the player's worldwide income. Therefore, if the club pays the fee to the agent, and this payment on behalf of the player results in taxation for the player, it should be deductible on the player's personal income tax (avoiding therefore any tax effect to the player).

Regarding image rights, Germany allows sportspeople to sell or lease this intangible asset. If the referred asset is sold, this may give rise to a capital gain if the purchase price is higher than the acquisition cost. This capital gain may be subject to German income tax (top rate, 45%), as well as trade tax (around 15%). The same treatment would be applicable to the leasing of the image rights, in such a case.

Portugal

The Portuguese NHR5 regime was introduced in 2009 and provides certain special tax rates and rules applicable to qualifying individuals. The NHR regime is applicable for a period of 10 years.

Both of the following requirements shall be met to qualify as NHR.

- To be considered as Portuguese resident taxpayer under domestic law. This is achieved either by exceeding the 183-day test of physical presence in Portugal in any twelve-month period commencing or ending in the calendar year concerned or by holding on the said period a dwelling that implies an intention of setting up a permanent residence.6

- The individual applying for the regime has not been taxed as a resident taxpayer in the five years prior to taking up residence in Portugal.

An NHR will be exempt from personal income tax on certain types of qualifying income, if this income is subject to tax in the country of source under an existing double tax treaty that allows for this or, if no tax treaty exists, were subject to tax in another jurisdiction and are not considered as Portuguese source income under domestic rules.

Certain types of qualifying income under the regime will also benefit from a double tax exemption (i.e. an exemption in Portugal and in the source jurisdiction).

A special flat rate of 20% is also applicable for certain types of income arising from different highly qualified activities.

Conclusions

As we have tried to explain in this article, each country has taken his own path to try to find the equilibrium between establishing an attractive tax regime to attract talent/wealth individuals and a prominent level of tax collection.

Spain has opted clearly for removing the special tax regime that may be favorable for sportspeople. However, countries like the UK, Italy, France or Portugal keep trying to attract sporting talent through tax measures.

The fact that each country has its own tax regime makes it more important to know the main guidelines of each country, to be able to profit from the tax advantages that may be applicable.

This analysis of each country shall be considered in each case, considering not only the eventual tax favorable measures of each territory, but also the internal legislation of each territory (i.e., the tax residence approach), as well as any corresponding tax treaty applicable.

5 Non Habitual Residence.

6 It may be demonstrated either by:
1 purchasing or renting a property in Portugal;
2 such property should be fully furnished and have all essential amenities functioning, such as water, electricity, gas (note that the contracts should preferably be in the name of the individual); and
3 mail addressed to the individual may also be used as further proof of residence.