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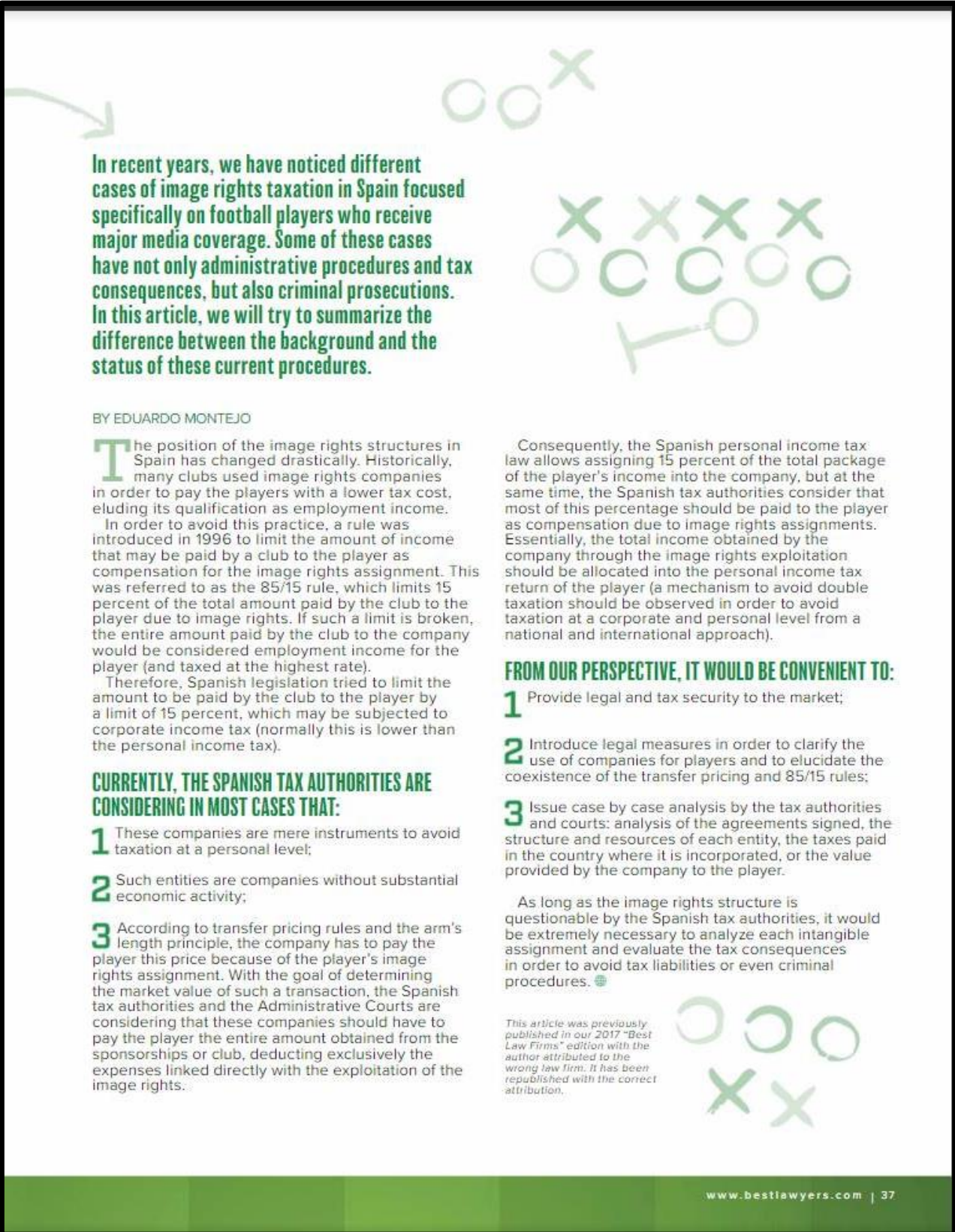
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# CURRENT STATUS OF IMAGE RIGHTS STRUCTURES IN SPAIN







In recent years, we have noticed different cases of image rights taxation in Spain focused specifically on football players who receive major media coverage. Some of these cases have not only administrative procedures and tax consequences, but also criminal prosecutions. In this article, we will try to summarize the difference between the background and the status of these current procedures.

BY EDUARDO MONTEJO

The position of the image rights structures in Spain has changed drastically. Historically, many clubs used image rights companies in order to pay the players with a lower tax cost, eluding its qualification as employment income.

In order to avoid this practice, a rule was introduced in 1996 to limit the amount of income that may be paid by a club to the player as compensation for the image rights assignment. This was referred to as the 85/15 rule, which limits 15 percent of the total amount paid by the club to the player due to image rights. If such a limit is broken, the entire amount paid by the club to the company would be considered employment income for the player (and taxed at the highest rate).

Therefore, Spanish legislation tried to limit the amount to be paid by the club to the player by a limit of 15 percent, which may be subjected to corporate income tax (normally this is lower than the personal income tax).

### CURRENTLY, THE SPANISH TAX AUTHORITIES ARE CONSIDERING IN MOST CASES THAT:

- 1 These companies are mere instruments to avoid taxation at a personal level;
- 2 Such entities are companies without substantial economic activity;
- 3 According to transfer pricing rules and the arm's length principle, the company has to pay the player this price because of the player's image rights assignment. With the goal of determining the market value of such a transaction, the Spanish tax authorities and the Administrative Courts are considering that these companies should have to pay the player the entire amount obtained from the sponsorships or club, deducting exclusively the expenses linked directly with the exploitation of the image rights.

Consequently, the Spanish personal income tax law allows assigning 15 percent of the total package of the player's income into the company, but at the same time, the Spanish tax authorities consider that most of this percentage should be paid to the player as compensation due to image rights assignments. Essentially, the total income obtained by the company through the image rights exploitation should be allocated into the personal income tax return of the player (a mechanism to avoid double taxation should be observed in order to avoid taxation at a corporate and personal level from a national and international approach).

### FROM OUR PERSPECTIVE, IT WOULD BE CONVENIENT TO:

- 1 Provide legal and tax security to the market;
- 2 Introduce legal measures in order to clarify the use of companies for players and to elucidate the coexistence of the transfer pricing and 85/15 rules;
- 3 Issue case by case analysis by the tax authorities and courts: analysis of the agreements signed, the structure and resources of each entity, the taxes paid in the country where it is incorporated, or the value provided by the company to the player.

As long as the image rights structure is questionable by the Spanish tax authorities, it would be extremely necessary to analyze each intangible assignment and evaluate the tax consequences in order to avoid tax liabilities or even criminal procedures. 🚫

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