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« Taxation of professional football players in Europe »

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Professional footballers in Europe are high-net-worth individual, most of whom come from a different country from the club they play for and are subject to various transfers throughout their careers, which makes their taxation complex. Typically, professional athletes earn income from various sources and in various locations. Often tax planning can reduce the rate of tax on this income, or to avoid double taxation. Moreover, there is no tax uniformity between the countries of the European Union. This study aims to compare the different tax regimes of these taxpayers with regard to income tax in the main countries of the European league.

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ACRONYMS

- **AO** : 'Abgabenordnung' (German General Tax Code)
- **AStG** : 'Gesetz über Besteuerung bei Auslandsbeziehungen' (German Foreign Tax Law)
- **CE** : 'Conseil d'Etat' (French Supreme Administrative Court)
- **CGI** : 'Code Général des Impôts' (French General Tax Code)
- **DGT** : 'Dirección General de Tributos' (Spanish Tax authorities)
- **DM** : 'Decreto Ministeriale' (Italian Ministerial Decree)
- **EStG** : 'Einkommensteuergesetz' (German Income Tax Act)
- **FIFA** : Fédération Internationale de Football Association (International Federation of Association Football)
- **HRMC** : Her Majesty's Revenue and Customs (Tax administration in the UK)
- **IFI** : 'Impôt sur la fortune immobilière' (French Wealth Tax)
- **IS** : 'Impuesto sobre sociedades' (Spanish Corporate Tax)
- **ISF** : 'Impôt de solidarité sur la fortune' (Former French Wealth Tax)
- **IRPF** : 'Impuesto sobre la Renta de las Personas Físicas' (Spanish individual income tax)
- **LGT** : 'Ley General Tributaria' (Spanish General Tax Code)
- **LPF** : 'Ligue de Football Professionnelle' (French Professional Football League)
- **NICs** : UK National Insurance Contributions
- **OECD** : Organisation for Economic Co-operation and Development
- **PAYE** : Pay As You Earn system
- **RD** : 'Real Decreto' (Spanish Royal Decree)
- **SRT** : Statutory Residence Test
- **STSJ** : 'Sentencia del Tribunal Superior de Justicia' (Decision of a Spanish Superior Court of Justice)
- **TSJ** : 'Tribunal Superior de Justicia' (Spanish Superior Court of Justice)
- **TUIR** : 'Testo Unico delle Imposte sui Redditi' (Italian Income Tax Code)
- **UEFA** : Union of European Football Associations
- **UK** : United Kingdom

INTRODUCTION

As a French student in a double degree in French and Spanish law, I had the opportunity to study my first two years of law degree in France at the University Panthéon-Assas (Paris II) and my third year of law degree and Master 1 in Spain at the Autonomous University of Barcelona (UAB). At the end of this fourth year of law studies I will obtain the equivalent of an Undergraduate diploma in both countries. Eager to complete my formation with a background in Common Law, my ambition is to integrate an L.L.M. in International Taxation and become a tax lawyer at the Paris, Madrid and New York Bars.

Having wished to give an international dimension to my studies, my choice of dissertation naturally oriented towards a subject of comparative law. Moreover, my experiences as tax law trainee at PwC Perú in Lima in 2017, Hogan Lovells LLP in Paris in 2019 and Gómez-Acebo & Pombo in Barcelona in 2020 have taught me that there are many differences between tax regimes from one country to another. This encouraged me to work on a comparative tax thematic.

Football is a subject that can be covered in many areas. Besides its popularity as a sporting discipline, the evolution of its economy has turned it into a real business, as demonstrated by the Football Money League Report[1], published annually by the company Deloitte. This report provides the profile of the most revenue-generating clubs in the world footballing map. In the report published in January 2020, the FC Barcelona reached the top of the Money League for the first time with a record revenue of 841 million euros, becoming the first club to break the 800 million euro barrier. In total, the world's top 20 football clubs generated a record €9.3 billion (2018: €8.3 billion) in combined revenues in 2018/2019, which represents an increase of 11% over the previous year.

(1) 23rd edition of the Deloitte Football Money League, January 2020

In the light of these figures, it appears obvious that an activity with such an economic impact will also have an impact on national public finances through taxation. As football is one of the few economic activities in which « the distribution of wealth is in favor of its employees » [2], this leads to high-net-worth individual, the greater part of whom come from a different country from the one of the club that recruited them and are subject to the various transfers governed by the FIFA (Federation of International Football Associations) in general and the UEFA (Union of European Football Associations) in particular for the specific rules at European level, making their taxation complex.

For the previously outlined reasons I have chosen to study the aspects related to the various tax regimes of the main protagonists in the football industry : the professional football players.

Prior to establishing the comparative study of the tax regimes of professional footballers in Europe, it is necessary to delimit the geographical scope of this study (I) and to define the notion of professional football player in accordance with the Law of the countries concerned (II).

I. A study limited to the most important European football leagues

According to the Deloitte Football Money League, the clubs generating the most revenue are among the leading European leagues : Spain, England, Italy, France and Germany. This study will consequently be limited to the tax treatment of professional footballers in these countries.

(2) ARRONDEL Luc, DUHAUTOIS Richard, "Le football, petit ou grand business?", June 2018

Spain, at the top of the Money League, has Lionel Messi, on contrat with the F.C. Barcelona, the highest paid athlete in the world as ranked by Forbes[3] magazine in 2019. The study will examine the tax regime applicable to professional footballers in Spain. There are three levels of taxation in Spain, namely, by the central government, by the governments of the 17 autonomous communities and by the municipal governments. However, the taxes levied by the autonomous communities are relatively unimportant, except the corporate and individual income taxes levied in the Basque Country and Navarre that are excluded from this study.

Neymar currently occupies third place in the Forbes ranking and is on contract with Paris Saint-Germain, the leading French club in fifth position of the Money League. This year the Olympique Lyonnais is the second French club to join the Money League. Thus, we will study the French tax regime for professional football players.

With 8 clubs, the English league is the most represented in the Money League classification. As part of the United Kingdom, England does not have its own tax system so we will consider the United Kingdom's tax system. HRMC (Her Majesty’s Revenue and Customs) is responsible for the care and management of taxes in the United Kingdom.

Also, Italy and Germany with respectively four and three clubs in the Money League are leagues of considerable importance. Their tax systems will be part of the comparative study.

Now that we have determined the countries in which we will study the tax regime for professional footballers, it is necessary to determine the legal qualification of the notion of professional footballer.

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(3) The World's Highest-Paid Athletes, 2019 Ranking, Forbes

II. The legal qualification of the notion of professional footballer

The UEFA[4] qualifies as professional footballer a « player who has a written contract with a club and is paid more than the expenses he effectively incurs in return for his footballing activity ».

In Spain, professional footballers are those recognized as professional athletes according to the Real Decreto 1006/1985[5] (RD, Royal Decree) of 26th of June 1985 regulating the special labour relationship of professional athletes which states in its Art.1.2 that « professional athletes are those who, by virtue of a relationship established on a regular basis, dedicate themselves on a voluntary basis to the practice of sport in the name and within the framework of the organisation and management of a club or sports entity in return for remuneration.» Moreover, in a decision of the Catalan TSJ (Tribunal Superior de Justicia) of 20th of October 1992 [6], the judges specified « amateurs or sportsmen and women who receive compensation for expenses through an advertising partnership contract are not considered to be included in the special labour relationship of professional sportsmen and women ».

The French relevant rules can be found in the LPF's « Charte du Football Professionnel[7] » (Professional Football Charter). Sub-title 4 of Title III of the charter deals with the status of professional footballers. Article 500 provides: "A player becomes a professional by making football his profession".

UEFA's definition is commonly accepted in all the countries studied, the status of professional footballer is not regulated by the countries in particular.

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(4) UEFA Dictionary

(5) Real Decreto 1006/1985, de 26 de junio, por el que se regula la relación laboral especial de los deportistas profesionales

(6) TSJ Cataluña de 30 de octubre de 1992 (RJ Aranzadi 1992, 5168)

(7) Regulation of the 'Ligue Professionnelle de football"

Moreover, generally all the countries under study do not define the term « professional footballer » but the term « professional athlete ». It is thus inferred that a professional footballer is a footballer with the characteristics of a professional athlete : the fact of practicing a sport under contract and against revenue.

Also, in the Commentary[8] of the Article 17 of OCDE Model Convention on income tax no precise definition is given of the term « sportsmen » but it said is not restricted to participants in traditional athletic events such as runners, jumpers and swimmers but it also covers, for example, golfers, jockeys, footballers, cricketers and tennis players, as well as racing drivers.

Since the fact of receiving a revenue is the taxable event on income tax, the question of the taxation of professional footballers' income will be the main object of the study. All other taxes potentially applicable to a footballer other than in his status as a professional footballer are excluded. Today, each of the countries under study has an income tax system in force, with some countries having special features specific to professional footballers or to professional sportsmen and women in general.

I will first determine the place of taxation of the incomes generated by the professional football player in Europe (Title 1), then compare the different income tax systems in these countries and the particularities applied to professional footballers (Title 2).

(8) Commentary of the Article 17 of OCDE Model Convention

Title 1. Place of taxation of professional footballers in Europe

This title aims to determine the place of taxation of professional footballers in Europe by establishing a comparative study of the determination of the residence of those subjects in Europe with regard to national provisions (Subtitle 1) and by analyzing the special provisions on sportsperson in relevants double taxation conventions (Subtitle 2).

Subtitle 1. National regulations on persons liable to income tax

There are evidently no specific provisions for determining the residence of professional footballers. However the purpose of identifying a footballer's tax residence is to determine where he will have to pay his taxes. In fact, generally the tax payer in a given territory is the person residing in that territory. It may seem complicated to determine the tax residence of a professional footballer. This complexity is mainly linked to the strong international dimension of the profession, indeed football players can be subject to numerous transfers, have several residences or play competitions abroad.

To be subject to income tax in the countries under study the general rule is the residence (I), however under certain conditions there are some exceptions of persons who can be considered as taxable persons without being resident (II).

I. National residence rules for determining taxable persons

The main difference between the different tax systems in the countries under study lies in the fact that some countries establish a minimum length of residence (A) while others take into account subsidiary criteria based on habitual character (B).

A. The criteria of length of stay in order to determine tax residence

In Spain, an individual who is a resident of Spain is liable to individual income tax ('Impuesto sobre la Renta de las Personas Físicas', IRPF) in respect of his worldwide income and capital gains as set out in Article 9 of the LIRPF[9] (Individual Income Tax Law). The main criteria for an individual to be considered as resident of Spain for tax purpose is the fact of staying in Spain for more than 183 days, consecutively or not, in a calendar year. This means proving that the person has spent more than half of the year in Spain. If the person concerned wishes to prove that he or she is a tax resident in another country, Art.105 of the LGT[10] ('Ley General Tributaria', Spanish General Tax Code) provides that the burden of proof lies with the person who wishes to assert his or her right, and in this case it is up to the alleged taxpayer to prove this by any means of proof. In a request to the DGT ('Dirección General de Tributos', Spanish Tax Autorities) on 12th November 2011[11], the consultant formerly resident in Spain has changed his tax residence to the United Kingdom and wants to know if in order to prove his tax residence in the United Kingdom it would be enough to present the salaries collected in that country from April to December 2014 in order to be exempted from having to present the income tax return for 2014 in Spain. The tax authorities replied that tax residence in another country can be proved by providing a certificate of tax residence from the country in question, thus overturning the presumption that the temporary abandonment of Spanish territory is merely a sporadic absence. For the purposes of proving United Kingdom tax residence in this case, and in view of the fact that it has not been possible to obtain such a certificate for the financial year 2014, as suitable evidence for this purpose, the consultant, if required by the Spanish tax authorities, may use all legally admissible means of evidence to prove his residence in the United Kingdom.

(9) Ley 35/2006, de 28 de noviembre, del Impuesto sobre la Renta de las Personas Físicas y de modificación parcial de las leyes de los Impuestos sobre Sociedades, sobre la Renta de no Residentes y sobre el Patrimonio.

(10) Ley 58/2003, de 17 de diciembre, General Tributaria.

(11) DGT Request V3473-15 (12/11/2015)

In the United Kingdom, until 2013 there was no statutory definition of residence. Finance Act 2013[12] introduced a Statutory Residence Test. The SRT provides three sets of tests, in determining the residence of an individual : four automatic UK residence test, five automatic overseas test and « sufficient ties » tests. Focusing on the four automatic UK residence test, each of which establishes length requirements, we find the same main criteria as in Spain i.e. being present in the UK for 183 days minimum in a tax year. If met for the tax yer, no other consideration is required. If not, the second test consists in having a home in the UK for all or part of a tax year and during the period when the individual has that home, there is a period of at least 91 consecutive days, 30 of which fall within the tax year, when either the individual has no home overseas; or the individual has (a) home(s) overseas, but spends no more than 30 days in the tax year in that home(s). This refers to fewer than 30 days in the tax year. The third test relates to work activity, i.e. working at least 3 hours in the UK on at least 75% of the person's working days over a period of 365 days without a significant break from work and during the tax year. Finally the residence is automatically recognized when the individual, having been treated as UK resident under one of the above automatic tests for each of the preceding 3 tax years, dies while having a home in the United Kingdom. The concept of domicile *(≠ residence)* is an interesting feature of the UK as under Common Law every individual has a domicile of origin which is usually the domicile of his father at the time of his birth. A professional footballer, citizen of another country, who enters the United Kingdom will usually, for the purposes of UK law, retain his overseas domicile of origin, throughout even a prolonged period of residence in the United Kingdom, if he retains the intention to leave the United Kingdom at the end of that period. The liability or non-liability, to substantial amounts of tax, can depend on an individual’s domicile status. As an individual not of UK domicile, he can accordingly be entitled to privileged treatment of his offshore income and gains for the purpose of UK income and capital gains tax.

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(12) Schedule 45, Finance Act 2013 : Statutory Residence Act

The relevant provisions in Italy are contained in Art.2 of the TUIR[13] ('Testo Unico delle Imposte sui Redditi', Italian Income Tax Code) which provides that is deemed to be resident in Italy in any of the following conditions are met on 183 days or more during the tax year : being registered in the Civil Registry of the Resident Population, being resident in Italy pursuant to article 43 of the Italian Civil Code or being domiciled in Italy pursuant to the same article. Article 43 of the above-mentioned Civil Code defines a person's place of residence as the place where he has his habitual abode while his domicile is the place where he has his centre of vital interests meaning his businesses and interests. This distinction differs from the French and Spanish tax systems which also use these criteria to determine residence.

While the calculation of length of stay in the national territory is the most common means of determining an individual's residence for tax purposes, some tax systems do not use this criterion, or not exclusively, and use subsidiary criteria such as habits.

B. Habits as subsidiary criteria for determining tax residence

Although the length of stay is the most common criterion for proving residence in Spain, it is not the only one used. In fact, the other criteria established by Art.9 of LIRPF, which is subsidiary to the first explained (A) consists of having his main center of business or professional activities or economic interests in Spain. In this case the burden of proof rests with the tax authorities, not with the taxpayer. Finally Spanish tax authorities start from a presumption under which an individual is deemed to be a resident in Spain if his non-legally separated spouse and minor defendant children qualify as residents of Spain under or the rule of stay exceeding 183 days in a calendar year or the rule of main centre business or professional activities or economic interests in Spain.

(13) TUIR, Italian Income Tax Code

In France in accordance with Art.4B of the CGI[14] (‘Code Général des Impôts’, French General Tax Code) is considered to have his domicile in France, regardless of their nationality, persons who have a home or, in absence of any home, principal abode in France, perform employment or independent services in France or have the center of their economic interests in France. These criteria are similar to those of the Spanish system. However, the major difference lies in the first requirement of « home or principal abode ». Indeed, here the main rule is the one of habits and centre of family interests, failing which the criterion of « principal abode » is applied : that of 183 days of minimum stay per year. Nevertheless, it is a secondary criteria and in two judgments from 19th of November 1969[15] and 16th of July 1976[16], the Conseil d'Etat (French Supreme Administrative Court) ruled in favor of the tax authorities and admitted the character of « principal residence » in France for persons having stayed less than six months on the national territory but notably more than in other countries.

Germany applies the same criterion of habitual place of abode. Section 8 of AO[17] (‘Abgabenordnung’ German General Tax Code) provides that an individual’s domicile is the place where he occupies a home « in circumstances which indicate that he will retain and use it ». An individual’s habitual place of abode is the place where he is present in circumstances which indicate that his stay is not just temporary, only the actual facts are relevant, not the intention of the individual. Section 9 of AO provides that in case of continuous presence in Germany for a period exceeding 6 months (i.e. 183 days) it is presumed to be the place of habitual abode. Contrary to the rule in the Spanish tax system this period of presence in the territory must be continuous, however, short journeys will be included in the period. As in France, presence for a period of less than 183 days

(14) CGI, French General Tax Code

(15) CE 19/11/1969 n°75295

(16) CE 16/07/1976 n°94488

(17) AO, German General Tax Code

on German territory can also be considered as habitual residence if this presence is not temporary.

Each country studied therefore has a different way of determining an individual's tax residence. Nevertheless, in view of the rules laid down by the respective tax systems, a footballer resident in one of the countries mentioned and employed by a club participating in the national championship of that country is likely to be considered a resident for tax purposes in the territory in question and therefore to be taxed there on his worldwide income.

However, being a resident is not the only way of being recognized as taxable in a country, as some tax systems attribute the status of taxable person to non-residents.

II. Taxation of non-residents

As a rule, non-residents for tax purposes are individuals who does not qualify as tax residents and are therefore not subject to income tax. However there are several situations in the various tax systems studied in which a non-resident professional footballer may be subject to income tax. This can apply to both inward (A) and outward expatriate individuals (B).

A. Inward expatriate individuals subject to income tax

Some tax systems have introduced an advantageous regime for non-resident individuals who move their tax residence to their territory. Most of these regimes can benefit professional footballers.

In Spain a non-resident is defined as an individual who does not qualify as a resident under the criteria of Art.9 of the above-mentioned LIRPF. Individuals who move their tax residence to Spain may choose to be taxed according to the Personal Income Tax rules or according to the INRN (Non-Resident Income Tax) rules. The RD (Royal Decree) 5/2004, of 5 March, approving the revised text of the Non-Resident Income Tax Act introduced the tax regime for non-residents. Later RD 687/2005 (Royal Decree), commonly known as "Ley Beckham" introduced a special regime allowing foreigners moving their tax residence to Spain to benefit from the non-resident tax regime. This law aims to attract foreigners by proposing a tax reduction on the IRPF. Football player David Beckham was one of the first individuals to benefit from this special regime. The conditions for applying this regime are, on the one hand, not having resided in Spain for the last 10 years and, on the other hand, the change of residence must be for the purpose of a professional contract and the employee must be a Spanish entity or a non-resident entity with a permanent establishment in Spain. This law has suffered numerous modifications, it was first amended reducing the scope of application of the special regime to persons with a labour income of less than 600.000 euros per year. In 2015 new provisions were introduced excluding professional sportsmen from this regime. Thus, although there is a scheme for inward expatriates in Spain, it is no longer applicable to professional footballers.

Two similar regimes exists for individuals transferring their tax residence in Italy. First Law No. 238 of December 11, 2016 (Italian Budget Law 2017) introduced a flat tax for hight-net-worth individuals transferring their tax residence Italy. This regime is called the « Res non dom regime » : individuals who transfer their tax residence in Italy can opt for a substitutive taxation to all income originating abroad if the taxpayers have not been resident in Italy for at least 9 years out of the 10 years preceding their transfer to Italy. Taxpayers may access to the regime submitting an advance tax ruling to the Italian Revenue Agency or exercising the option for substitutive taxation in their tax return. This is

the regime from which Cristiano Ronaldo benefited when he moved from Real Madrid to Juventus in 2018. Then in 2019, Italy introduced, with Law Decree No. 34 of April 30, 2019 ("Decreto crescita 2019"), a similar tax regime to Spanish « Ley Beckham » the so-called « Regime degli impatriati » to inbound workers who transfer their tax residence in Italy starting from 2020. This tax regime includes professional athletes. A professional football player may benefit from this special tax regime by collectively becoming an Italian tax resident, haven't being a tax resident in Italy two years before transferring the tax residence, undertaking to remain in Italy as tax resident for the following two years and mainly performing his activity in Italy.

Although France has the reputation of being one of the European countries with the highest tax and may not appear as the most competitive tax system in order to attract international players, Finance Bill 2017 provides for an extension from five years to eight years of the impatriate tax incentive package available to foreign talent moving to France for professional purposes. This reform stems from a desire of the French government to make it the most attractive regime for impatriates. This incentive will benefit football players entering into an employment contract with a French club if they have not been a French tax resident for the past five years and they are acquiring French tax residency at the time they settle in France.

Non-resident professional footballers joining an Italian or French club can therefore benefit from a special regime as new tax residents which allows them to reduce their tax liability a certain number of years.

In addition, some tax systems consider former tax residents as taxable persons under certain situations.

B. Outward expatriate individuals subject to income tax

Several European systems consider former tax residents who have moved their tax residence to another country to be subject to income tax, this is particularly the case for individuals moving their tax residence to tax havens.

Article 8.2 of the LIRPF in Spain provides that when there is a change of residence to a country considered a tax haven, the individual does not lose his status as a taxpayer. He will therefore remain taxable on his income generated worldwide in the year of his emigration and for the next 4 years. The tax law provides that the capital gains will be allocated to the last tax period in which the taxpayer has its habitual residence in Spanish territory, considering the tax rate is different according to the Autonomous Communities, and the market value of the shares or holdings on the date of accrual of that tax period will be taken into account. If the shares or holdings are transferred in a tax period in which the taxpayer maintains such status, the market value of the shares or holdings that would have been taken into account to determine the capital gain provided for in this article will be taken as the acquisition value for the calculation of the capital gain or loss corresponding to the transfer.

A list of tax havens is available on the website of the Organisation for Economic Co-operation and Development[18] (OECD). The OECD is an international organisation that works « to build better policies for better lives ». It establishes works with so-called transparent countries that provide information on tax matters. Countries that have not established this transparency are considered as tax heavens. Some countries listed as tax heavens are declared to have made commitments to the OECD to improve transparency and effective exchange on information for tax purposes.

(18) OECD website

Italian nationals who have removed themselves from the Civil Registry of the Resident Population on moving to a country included in the black list found in the DM[19] (Ministerial Decree) of May 4, 1999 are also deemed residents of Italy unless proof to the contrary is provided.

It can therefore be seen that if recommendations are established by the OECD, countries determine the qualification of tax havens according to their own criteria, with or without taking into account the recommendations made. To illustrate : Andorra, the Principality of Liechtenstein and the Principality of Monaco appear in the list established by the Italian ministerial decree yet in May 2009, the Committee on Fiscal Affairs[20] decided to remove all three remaining jurisdictions from the list of uncooperative tax havens in the light of their commitments to implement the OECD standards of transparency and effective exchange of information and the timetable they set for the implementation. As a result, no jurisdiction is currently listed as an unco-operative tax haven by the Committee on Fiscal Affairs.

Furthermore, natural persons of French nationality who bring their domicile or residence to Monaco or who cannot prove five years habitual residence in Monaco on 13 October 1962 are subject to income tax in France under the same conditions as if they had their domicile or residence in France[21]. That provision could therefore apply to a French footballer joining the Monaco club, although the Convention stipulates that it applies only to French nationals. However, a footballer in a French club who is not a French national and who transfers to Monaco would not be affected by that measure.

(19) Italian Ministerial Decree of May 4, 1999

(20) OECD - Committee on Fiscal Affairs proof of Monegasque commitment

(21) BOFIP - Transfer of a residence outside France

According to section 2 of the AStG[22] (German Foreign Tax Law), a German national who moves to a foreign country « remains subject to an extended tax liability as a non-resident » for 10 years from his departure in 3 situations. So if a Footballer under contract with a German club move to a country which imposes no or low taxes he will still pay taxes in Germany as in Spain and France. But Germany is more rigorous on the matter, indeed this rule is not limited to tax havens but also extend to countries where the income tax imposed is more than one-third lower than it would be in Germany for a single person with an annual income of 77.000€ or if the individual is subject to a preferential taxation which diminishes his tax burden considerably in comparison to other taxpayers in that particular country. Remain also subject to an extended tax liability a German national who has been subject to unlimited German Taxation for at least 5 of the 10 years preceding his departure or who retained essentials economic ties with Germany.

We can therefore see that most of the countries under consideration have introduced in their tax systems measures to prevent tax evasion by former taxpayers who have changed their tax residence by allowing in some cases the extension of their taxation as a resident.

(22) AStG

Subtitle 2. Foreign tax liability of footballers : double taxation treaties

If it results difficult to define the tax residence of an individual in terms of national provisions or in terms of international provisions, it is generally appropriate to refer to international provisions. Such international provisions are generally conventions established for the avoidance of double taxation of the same chargeable event. In the case of professional footballers in principle with the above-mentioned rules (Subtitle 1) the question of residence should not persist. Nevertheless, it is possible that they may receive income for an activity carried out in another territory in which they are not resident.

The purpose of this subtitle is to determine the place of taxation of such incomes when a professional footballer generates income in another country. First during European competitions by comparing the double taxation convention between the European countries under study (I) then during international competitions (II).

I. <u>Double taxation conventions regulating incomes generated in European competitions</u>

Provisions related to income earned by professional sportsmen outside their country of residence are set out in the OECD Model Double Taxation Convention (A), but countries that have signed bilateral conventions may have a different wording or interpretation of these conventions (B).

A. The OECD Model Tax Convention on Income and on Capital

A professional footballer under contract with a European club may be required to play in another European country. He will receive income for this performance. The risk is therefore that the footballer will be taxed in both countries: the country where he is a tax resident and the country where the performance took place. The purpose of a tax treaty is to eliminate double taxation[23] through prevention : the signatory countries agree on the place of taxation of the same taxable event. The OECD published a model of Tax Convention[24] to guide countries in preventing this double taxation.

Article 15 of the OECD Model Convention deals with income from employment and provides that salaries derived by a resident of a Contracting State in respect of an employment shall be taxable only in that State unless the employment is exercised in the other Contracting State. Thus, if the employment is exercised in that other State, remuneration derived therefrom may be taxed in that other State.

From an international point of view, just like artists, professional sportsmen and women are taxed on the basis of Article 17 of the OECD Model Tax Convention. It should be pointed out that Article 17 of the OECD Model Tax Convention is part of a ≪ model ≫ and to be applicable it must therefore be contained in a tax treaty between the two countries concerned.

In 2017, the OECD Model Tax Convention has been amended. This update was approved by the Committee on Fiscal Affairs on 28 September 2017 and by the OECD Council on 21 November 2017. The 2017 update mainly contains amendments to the OECD Model Tax Convention that were approved as part of

(23) BOFIP - Generality on Tax Convention

(24) OECD Model Tax Convention

the BEPS package[25] or that were planned as part of the follow-up work to the BEPS measures relating to tax treaties. These amendments do not relate to Article 17 on artists and sportsmen and women.

The first paragraph provides that « income derived by a resident of a Contracting State as an entertainer, such as a sportsperson, from that resident's personal activities as such exercised in the other contracting state, may ba taxed in that other state ». This provision is an exception to Articles 7 and 15(2) of the OECD Model Convention. Article 15 is of particular interest to us here because we are considering the salaried activity of a footballer and not the activities of a company. Paragraph 2 of Article 15 provides that income received by a resident of a Contracting State in respect of an employment exercised in the other State shall be taxable only in the first-mentioned State if : the stay is for less than 183 days, the remuneration is paid by an employer who is not a resident of the other country and the remuneration is not paid by a permanent establishment which the employer has in the other State

It is appropriate to underline the problem of the income of professional sportsmen and women in order to determine in which cases this income is taxable. First, the notion of « cross-border activity » has been clarified in the comments prepared by the OECD, they consider sportsmen often perform their activities in different States making it necessary to determine which part of their income is derived from activities exercised in each State and « such determination must be based on the facts and circumstances of each case » but they established general principles. We may consider « cross-border income » under Article 17 elements of income that are directly linked to specific activities exercised by the sportsman in a State other than the State in which he resides. The Commentary includes a prize paid to the winner of a sports competition taking place in that State; a daily

(25) BEPS project to fight tax evasion, OECD

allowance paid with respect to participation in a tournament in that state to be derived from the activities exercised in that State.

The wording of paragraph 1 imposes two conditions : that the income be derived by a person « as an entertainer [...] or as a sportsman » and that it be derived "from his personal activities as such". Thus, even if a person is an sportman, income derived from the activities of that person may not be derived from the person's activities « as a sportman » and may therefore not be covered by Article 17. There is a need to clarify in which circumstances income derived by a sportsman can be said not to be related to the personal activities of sportsman "as such". Also, it is frequent for sportsmen to derive, directly or indirectly, a substantial part of their income in the form of payments for the use of, or the right to use, their image rights, such as the use of their name, signature or personal image. Where such uses of the sportsman's image rights are not connected to his performance in a given State, the relevant payments would generally not be covered by Article 17[26].

Second paragraph states that « in respect of personal activities exercised by a sportsperson acting as such accrues not to the sportsperson but to another person, that income may be taxed in the Contracting State in which the activities of the entertainer or sportsperson are exercises » meaning if paragraphe 1 deals with income derived by individual sportspersons from their personal activities, paragraphe 2 deals with situations where income from their activities « accrues to another person, and the State of source does not have the statutory right to look through the person receiving the income to tax it as income of the performer »[27]. This provision stipulates that the portion of income that cannot be taxed to the athlete in question is taxed to the person who receives it. If this person receives it through a business activity, the tax may be due in the territory where the

(26) Commentary 9 on Article 17, OECD Model Tax Convention

(27) Commentary 11 on Article 17, OECD Model Tax Convention

regulatory event occurred, even though the person does not have a permanent establishment in that country. This paragraph applies in 3 main cases : in the case of a management company that receives the income of professional football players, if the team constituted as a legal entity receives this income it may be taxed according to the heading of paragraph 2 of Article 17 finally in the case of the so-called « star-company », which is a tax avoidance device, « the income of the performance is not paid to the sportsperson but to another person, in such a way that the income is taxed in the State where the activity is performed neither as personal service income nor as profits of the entreprise in the absence of a permanent establishment». Commentary on Article 17 precise that the application of such paragraph also apply to situations where the sportsperson ant the other person to whom the income accrues are residents of different Contracting State.

In principle, thanks to this article, the same taxable event, the fact that a professional footballer receives income deriving from a performance abroad, should not be taxed in two different countries. If not in most cases, this provision is contained in bilateral tax treaties between countries, this article don’t provide how to compute the income so it leaves it to domestic law of the Contracting States to determine the deduction. Therefore, States may conclude different provisions to those laid down in the Model or interpret them differently from the OECD commentaries.

B. Conventions establishing additional rules to the OECD model

As a reminder, Article 17 of the OECD Model Tax Convention is part of a « model » and to be applicable it must therefore be contained in a tax treaty between the two countries concerned. While most countries use the Model Double Taxation Convention to draw up their bilateral tax treaties other countries may choose to supplement the text of the model or interpret it differently from the OECD.

The double taxation conventions concluded between Italy and Spain in 1977, Italy and the United Kingdom in 2013 and Spain and the United Kingdom in 2013 incorporate Article 17 of the OECD Model Convention in the same terms. On the other hand, the double taxation conventions concluded between France and Germany in 1959, France and Italy in 1989, Italy and Germany in 1989, France and Spain in 1993, France and the United Kingdom in 2008, Germany and the United Kingdom in 2010 and Germany and Spain in 2011 substantially take over paragraphs 1 and 2 of the OECD Model Convention but add certain rules. The rules added to these conventions should be analyzed and their scope studied.

Spain generally use the OECD Income and Capital Model for tax treaty negotiations. Calderón Carrero[28] questions the "pseudo-legislative" nature of this method, in addition to highlighting the lack of clarity it generates. It considers that it also emerges from the above-mentioned comments that there is a grey area concerning the taxation of certain types of payments received by non-resident artists and sportsmen and women'; 'nor does it allow clear conclusions to be drawn on all the issues raised by the taxation of such income in addition to strictly artistic or sporting income'. Among the proposals included in the 2010 draft of the OECD's Committee on Fiscal Affairs, they conclude that Article 17 also extends

(28) Calderón Carrero, "La tributación de los artistas y deportistas no residentes en el marco de los convenios de doble imposición", CissPraxis, 2001

to income from activities performed by commentators or analysts on a sporting or artistic event provided that the athlete or artist cannot participate in the performance; to activities considered to be complementary to the principal artistic or sporting activity; and to personal performances of the artist and athlete for the purposes of preparation and training. In its treaties with France and Germany provisions are added concerning activities mainly financed by the public funds of the State of origin of the sportsman, in this case the income received for an activity abroad will be taxed in the State of origin.

In France, since 1963, most tax conventions have been concluded, and old conventions renegotiated, along the general lines of the OECD Model Convention. As each tax treaty is negotiated separately, variations exist. According to Article 55[29] of the Constitution, a duly ratified tax treaty supersedes French domestic law on condition of reciprocal application by the treaty partners. For example, French nationals resident in Monaco may be subject to French income taxes. As we have seen, the convention with Spain (1993) but also the one with the United Kingdom (2008) add to the OECD model that if the personal activity is principally financed by public funds of the first State it is taxable in the first State. Also, in the convention with Italy (1989) there is an attempt to clarify what is meant by « personal activity », which is limited to professional activity. For a footballer this would translate into a performance such as a match abroad. It is assumed that image rights are excluded if they have no connection with the professional footballer's employment contract. Finally the Convention with Germany (1959), states that the « use of, right to use, his name, image or other personality rights [are] taxed in other state », thus specifying which activity falls within the field and admitting the right to an image.

The United Kingdom has one of the most extensive networks of income tax treaties in the world, currently numbering over 140 comprehensive treaties.

(29) French Constitution

UK has not published a model income tax treaty and generally follows the OECD Model Convention on income and capital, subject to any general reservations recorded by the United Kingdom, but different provisions in individual treaties that reflect the negotiating positions of the contracting states are frequently found. The Double Taxation Conventions signed with France and Germany provide for the same concerning activities financed by public funds of the first state where the athlete is resident.

Germany also has a very extensive treaty network. The conventions generally follow the OECD Model Convention. According to section 2 of the AO , treaty provisions prevail over domestic tax law. A domestic law that became effective after the treaty, however, may override a treaty provision. The provisions differing from the model have been mentioned above. However, in Case 3K 69/05 regarding Germany vs Turkey, April 27, 2007, The court was asked to rule on the definition of « personal activities ». It was a case where a footballer formerly under contract to a German club and currently under contract to a Turkish club had played a match in Germany. What is of interest to us in this case is that the Court started from the assumption that professional football players were employees of their clubs and received income from employment and that Art. 17(1) of the OECD Model Convention income did apply for employment, plus, 17(1) of Germany treaties concluded with France for example do not include income from employment. So although the text is the same, in reality the interpretation of the judges of the country concerned may differ from the OECD model, which is a non-binding recommendation. This is the case in Germany, where « personal » does not mean « independent ».

Finally, there is no specific mesure in the tax conventions concluded by Italy, they normally provide for the avoidance of double taxation in accordance with the OECD Model and the special features are the same as already exposed.

II. Double taxation conventions regulating incomes generated in International competitions

These double taxation treaties are studied because professional footballers are often required to play in countries other than those of the club that recruited them. Sometimes these trips may take place in the context of an international competition. The most concrete example of an international competition is the FIFA World Cup.

We will therefore study the tax provisions specific to sportspersons found in double taxation treaties to determine where the income of players who participated in the 2018 football World Cup in Russia was taxed (A) and where European players who will potentially participate in the 2022 World Cup in Qatar may be taxed (B).

A. Taxation of income generated by the 2018 FIFA World Cup in Russia

Four of the five countries under study participated in the 2018 FIFA[30] World Cup in Russia. As Italy did not participate in this competition, the double taxation treaty between Italy and Russia will not be studied. FIFA, the organiser of the World Cup, unveiled in October 2017 the bonuses paid to teams participating in the 2018 Football World Cup in Russia. World champion France have won 32,200,000 euros, England in 4th place in the competition have won 18,600,000 euros, Spain in the 8th final have won 10,100,000 euros and Germany in the first round would have won 6,800,000 euros. The prizes go to the national team and the national team then pays an individual bonus to the players. We are therefore studying the taxation of the bonuses earned by the players considering the ones who are resident in the country with which they participated in the World Cup.

(30) FIFA : « Fédération Internationale de Football Association »

In France the players would have each received a bonus of 400,000 euros[31]. Article 17 of the France and Russia Income and Capital Tax Treaty[32] of 1996 provides that income derived by a resident of a Contracting State as an athlete, or to another person, in respect of his personal activities as an athlete exercised in the other Contracting State may be taxed in that other State.
However, if such income is borne to a greater extent than 50 per cent by public funds of the first-mentioned State, such income may be taxed only in the first-mentioned State. Thus, in principle, bonuses subscribed to players of the French team should be taxed in Russia. In practice, many players of the French team have chosen to donate the bonuses to associations. In accordance with the provisions of Article 200 of the CGI[33], taxpayers who are fiscally domiciled in France within the meaning of Article 4 B of the CGI[34] may benefit from a "tax reduction for donations ».

Article 17 of the Russia and United Kingdom Income Tax Treaty[35] also provides that income derived by a resident of a Contracting State as an athlete, or to another person, in respect of his personal activities as an athlete exercised in the other Contracting State may be taxed in that other State. So bonuses granted to football players of the English team resident in the United Kingdom may be taxed in Russia too. Finally Article 17 of Russia and Spain Income and Capital Tax Treaty[36] and Germany and Russia Income and Capital Tax Treaty[37] as amended through 2007 also provides the same so the bonuses their resident football players won bay be taxed in Russia too.

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(31) Les Bleus champions du monde : 32,5 millions d'euros de gains pour la France
(32) France - Russia Income and Capital Tax Treaty (1996)
(33) Article 200 of the French General Tax Code
(34) Article 4 B of the French General Tax Code
(35) Russia - United Kingdom Income Tax Treaty (1994)
(36) Russia - Spain Income and Capital Tax Treaty (1998)
(37) Germany - Russia Income and Capital Tax Treaty (1996)

B. Taxation of income generated by the 2022 FIFA World Cup in Qatar

The next FIFA World Cup will take place in 2020 in Qatar[38]. The European qualifiers have not yet happened, thus all of the countries under consideration will potentially participate in this World Cup, so we will be looking at the five countries' double taxation treaties with Qatar.

There are no special provisions to professional sportsmen in the convention between France and Qatar[39]. The bonuses paid to the players of the French team will therefore be taxed on the basis of Article 20, which provides that income derived from Qatar shall be taken into account for the calculation of French tax when the beneficiary is a resident of France. In such case, the tax paid in Qatar shall not be deductible from such income but the recipient shall be entitled to a tax credit against French tax.

The conventions signed by Qatar with Spain[40], Italy[41] and the United Kingdom[42] provide, as in the other tax treaties, that the income of a professional sportsman for the activity he has performed in a country other than his country of residence will be taxed in that other country, in this case Qatar.

Finally the Income Tax Treaty between Germany and Qatar is still under negotiation and not yet in force. This could lead to double taxation of bonuses paid to footballers of the German team resident in Germany. However, as the World Cup is more than two years away, it is not impossible that the negotiations will be completed by the time they will have to pay their taxes on the 2022 income.

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(38) Fifa World Cup Qatar 2022

(39) Qatar - France treaty to avoid double taxation (1990)

(40) Qatar - Spain Qatar - Spain Income Tax Treaty (2015)

(41) Italy - Qatar Income Tax Treaty (2002)

(42) UK - Qatar Double Taxation agreement (2009)

Title 2. Taxation of footballers' income in Europe

It is important to analyse the different kinds of income derived by professional sportsmen and in particular by football players in order to compare the European Tax Regimes. In general, income of professional footballers can be divided into two main types: income generated by sporting performance (Subtitle 1) and income generated by the exploitation of their image rights (Subtitle 2).

Subtitle 1. Taxation of income generated by the sporting performance of professional footballers

As explained in the introduction, a professional footballer is a professional sportsman with an employment contract with a club. Thus, a footballer's primary income is his or her employment income. As the footballer is an employee, the self-employed scheme is excluded.

Some tax systems have introduced provisions that are particularly beneficial to professional footballers if they meet certain conditions (I), failing which the general income tax system applies (II).

I. Application of Tax incentives

Some systems put in place attractive tax schemes for wealthy individuals. These schemes can generally apply to professional footballers who join a club and acquire tax residence in a foreign country.

As we saw earlier, the Spanish impatriate regime (« Impuesto sobre la renta de no Residentes) no longer applies to professional footballers. On the other hand, in Italy, a footballer is generally taxed on the basis of the general regime, but a footballer acquiring tax residence by joining an Italian club can choose between two special regimes: the « Regime degli impatriati » and the « Res non dom regime ». In France there is also a tax regime for impatriates « Régime des impatriés » based more on local income, but there is also a layer for financial income abroad.

As the conditions for applying these regimes have already been set out, it is now appropriate to study their particularities with regard to local income (A) and foreign income (B).

A. Tax incentives to footballers' local incomes

Following the Brexit decision, the French government wanted to make the French tax regime for impatriates the most attractive in the European Union[43]. This regime breaks down into two main areas of tax exemption. The first area concerns local income.

(43) Michel COLLET : Taxation of foreign professional football players : France takes the offensive

The principle is that the authorities allows an automatic 30% flat-rate dimmed indemnity based on the salary. For the professional footballer this include base and the many bonuses he can get from his contract with the club. But this exemption comes with limitations, there is an overall cap that limits the total exempt compensation under the impatriate regime to 50% of gross compensation received. Also the taxable salary must not be less than the « Comparable salary », i.e. the one earned by an equivalent employee not entitled to the impatriate regime. If so, the difference is added back to the foreign player's taxable income. A question arises about what is a « Comparable salary » in France for a professional football player. Indeed, Michel Collet considers that it is not possible to compare the salaries of two professional Ligue 1 footballers, considering that there is a too significant differences in level and therefore in remuneration between players. Thus, the solution is to compare the remuneration of a striker from a major club such as Paris-Saint-Germain with the remuneration of another striker from the same club. In order to make the French regime for impatriates more attractive, the 2017 Finance Act has extended the duration of the planned exemption. This exemption applies for a period of five calendar years following the date of taking up employment in France if it occurs before July 6, 2016 and for a period of eight calendar years following the date of taking up employment in France if it occurs after July 6, 2016. The extension from 5 to 8 years therefore does not benefit from the current deadlines.

Italy also introduced with Law Decree No. 34 of April 30, 2019 (Decreto crescita 2019) a new favorable tax regime referring to inbound workers, professional athletes included, who transfer their tax residence in Italy starting from 2020, the so-called « Regime degli impatriati ».

Italian « Regime degli impatriati » provides that a professional football player that transfer their tax residence to Italy as from January, 1 2020 meets all the requirements previously mentioned[44] he may benefit from this special tax regime and be subject to IRPEF (Italian personal income tax) on 50% of his income deriving from his activity performed in Italy, which means he get a 50% exemption. This special tax regime applies for five years after transferring tax residence and can be extended for another five years if a residential property is purchased in Italy in the previous 12 months since the acquisition of the Italian residence or in the following 12 months, or if there is at least a dependent child. The regime applies upon a specific option made by the sportsman and upon the payment of a proportional tax equal to 0,5% of the taxable income.

B. Tax incentives to footballers' foreign incomes

The French tax system includes several provisions regarding the taxation of foreign income. Two of these measures relate to the above-mentioned impatriate regime and another measure concerns wealth tax.

Another interesting feature is the additional exemption of the fraction of the salary corresponding to the professional activity performed abroad with the French club. Taxpayer may opt for a 20% cap to compensation received for days spent playing abroad and based on compensation after deduction of the additional part related to performance in France.

(44) Conditions of application of the Italian « Regime degli impatriati »

The other two measures do not concern the sporting activity of professional footballers but may be of interest to foreign footballers joining a French club.

The French impatriate regime provides 50% of exemption on financial income received abroad. This exemption relates to patrimonial income. It includes income from movable assets, whatever their tax system (distributed income, fixed-income investment products, life insurance and capitalisation products); copyright income received by the persons concerned and their heirs or legatees, income from the sale or concession of industrial property rights (patents, processes, trademarks, etc.) received by inventors, as well as income received by independent software creators are also included capital gains from the sale of securities and corporate rights when the custodian of the securities, or failing that, the company whose securities are sold, is established outside France. Any capital losses on these securities are recorded at 50% of the amount of the loss. Payment of these amounts must have been made by a person established outside France in a State or territory that has concluded a tax treaty with France that contains an administrative assistance clause to combat tax fraud or tax evasion.

Always in order to attract foreign wealthy individual such as footballers to France, the « ISF » (Impôt de solidarité sur la fortune), former French wealth tax regime in its previous legislation provided that non-French based assets remain exempt from Wealth Tax during the five years following the year of settlement in France. This measure has been

maintained[45] by the new wealth tax called IFI (Impôt sur la fortune immobilière).

The Italian Parliament introduced with Law no. 236 of December 11, 2016 (“Budget Law 2017”), a new tax regime fo individuals who transfer their residency to Spain, known as the “Res non dom regime” or “Regime dei neo domiciliati” (New Resident Regime) a regime from which Cristiano Ronaldo benefited when he was transferred from the Spanish club Real Madrid to Italian club Juventus in 2018. It establishes a lump-sum taxation of the non-italian-source incomes and gains for high-net-worth individuals transferring their tax residence to Italy : individuals who transfer their tax residence in Italy can opt for a substitutive taxation equal to 100.000 euros on a yearly basis with reference to all income originating abroad. This regime may also be extended to family members through the payment of a substitutive tax on their foreign income amounting to 25.000 euro per member. Taxpayers may access to the regime submitting an advance tax ruling to the Italian Revenue Agency or exercising the option for substitutive taxation in their tax return. However, all Italian-source income and gains remain subject to ordinary tax rules under the Italian personal income tax regime. Moreover, this Res non dom regime is an alternative to the « Regime degli impatriati » favorable tax regime referring to inbound workers : thus, sportsmen have to carefully consider which regime they choose to apply.

(45) 4730, Memento Fiscal 2020, Edition Francis Lefebvre

II. Application of the General Income Tax System

If the conditions are not met to apply the tax incentives in Italy of in France (A) or in the absence of a specific provision like in Germany, Spain and in the United Kingdom (B) the general personal income tax system applies to professional footballers.

A. Application of the general regime when tax incentives do not apply

Italian income tax regulation, « IRPEF » is governed by articles 1 to 71 of the TUIR[46] and « L'impôt sur le revenu » in France is codified and embodied in the CGI[47] (Code général des impôts).

Footballers who do not meet the conditions for the application of tax incentives, in particular footballers who are already tax residents or footballers who have benefited from the tax incentives and whose application deadlines have expired, will be subject to the general income tax regime.

Professional football players residing in France or Italy are now tax residents and therefore considered as taxable persons and are liable for national income tax on all their local and foreign incomes.

There are several categories of taxable income. In France, Article 13 of the CGI provides that each category of the taxpayer's net income is taxable. The most important incomes categories are : employment income, business income, agricultural income, professional income, income from activities performed by certain managers controlling family companies or limited partnerships, immovable property, movable property and capital gains. Italy also taxes all

(46) 'Testo Unico delle Imposte sui Redditi', Italian Income Tax Code

(47) 'Code général des impôts', French General Tax Code

income, the Italian categories are similar to the French categories and include : income from employment, business income, income from land and buildings, income from investment, income from self-employment and miscellaneous income, including capital gains.

Regarding professional footballers, more attention is paid to the employment income and more particularly to the salary they receive from the club that recruited them. This income is defined in Section 9 of the Italian General Tax Code and Articles 70 to 90 of the French General Tax Code. Both systems establish progressive tax rates.

In France the rules for the computation of income tax are complex, employment income is not subject to flat-rate taxation and is added together with pensions, annuities, dividends, interest, income from immovable property, professional and trading income, agricultural income and capital gains to form gross taxable income. From this gross taxable income, the taxpayer is entitled to deduct certain expenses. Once the net taxable income has been determined, the progressive tax is computed according to the family coefficient system and the tax rate schedule for the relevant year[48]. Italian computation of income tax is less complex same income tax rates has been applicable since 2007, they can be found in Article 11 of the TUIR[49]. On the one hand, the French system has a maximum rate of 45% over EUR 157,806 in 2020 for income from 2019. On the other hand, the maximum Italian rate is 43% over EUR 70,000. The Italian progressive rates are increased by a regional surcharge ranging from 1.23% to 3.33% and may also be increased by municipal surcharges up to 0.9%.

(48) See Annex 1

(49) See Annex 2

With respect to specific withholdings to employment income. In Italy, article 23 of the DPR 600/73[50] provides that employment income is subject to withholding tax by the employer. This withholding tax is a prepayment of individual income tax and is withheld at progressive rates that correspond to the progressive income tax rates. En France, with effect from 1 January 2019, the income tax is paid at source (« *prélèvement à la source »*) on any kind of income : income tax is levied at source monthly on the salary by the employer. In both cases, this witholdings tax will therefore be paid by the club. Thus, players tend to negotiate their salaries net of taxes without considering the tax aspect, which is a club matter.

It is also important to point out that income tax includes a social contribution component. In France, social taxes and social security contributions are generally withheld by the employer. In Italy these contributions correspond to approximately 9.5% of employment income.

Finally, concerning unilateral double taxation relief, France and Italy have two different regulations. While Italy provides for a foreign tax credit for taxes paid abroad on foreign income by an Italian resident, France has chosen to create a deduction for such taxes.

These measures apply where the tax incentive does not apply or no longer applies. In Spain, Germany and the United Kingdom the general regime applies in the absence of tax incentives for professional footballers.

(50) ‘Decreto del Presidente della Repubblica 29 settembre 1973’ (Decree 600/73)

B. Application of the general scheme in the absence tax incentives

For the record, there is a favorable regime in Spain for non-residents coming to work in Spanish territory, a regime that David Beckham enjoyed when he joined Real Madrid. However, this regime no longer applies to professional footballers transferred to Spain. In Italy and Germany, on the other hand, there is no tax incentive for professional footballers. These three countries therefore tax their resident professional footballers according to the general income tax regime.

Spanish article 2 of the LIRPF provides « residents are liable to income tax on individuals in respect of their worldwide income ». The same rule applies in Germany and in the UK.

Regarding German national incomes, section 2 EStG[51] establishes the complet list of income categories such as employment income, agriculture, trade or business, independent professional services, capital investment, rental income from immovable property and certain tangible movable property and income from royalties. In Spain the categories are employment incomes, incomes from movable capital, incomes from inmovable capital, business incomes, capital gains and imputed income. UK regulation includes almost the same categories but adds overseas property businesses those located in the UK.

As for Italy and France, for professional footballers, we are particularly focused on employment income. In the UK, the legislation relating to the taxation of employment income is set out in the ITEPA 2003[52] (Income Tax Earnings and Pensions Act). A professional footballer resident in the United Kingdom is therefore taxed under ITEPA in respect of his general earnings and specific employment income.

(51) 'Einkommensteuergesetz', German Income Tax Act

(52) Income Tax Earnings and Pensions Act, 2003, UK

The German, Spanish and UK systems all provide for progressive income tax rates. For 2019/20, the main rate structure[53] excluding dividend income for the United Kingdom establishes a 45% maximum rate over GBP 150,000. Germany has also introduced a maximum rate of 45% over EUR 270.501[54]. Finally, Spain has a general tax rate scale[55] with a maximum rate of 45%. The autonomous communities have the possibility to change the income tax rates. Today Catalonia has the highest rates in the country and the community of Madrid has the lowest rates. Thus, a footballer residing in Madrid will, in principle, pay lower taxes on his employment income than a footballer residing in Barcelona.

Regarding Social Security contributions, all Spanish resident employed individuals must pay monthly contributions to the social security system, which consists of a general contribution system and special contribution schemes. Then, compulsory social security contributions are deductible for individual income tax purposes. In the German system, are payable by employees pension insurance at 9.3% on a monthly salary up to EUR 6,900, health insurance at 7.3% on a monthly salary up to EUR 4,687.50, unemployment insurance at 1.2% on a monthly salary up to EUR 6,900 and insurance for disability and old age at 1.525% on a monthly salary up to EUR 4,687.50, for childless employees, the respective rate is increased by an additional 0.25%. As in Spain, section 10(3) of the EStG provides that these contributions may be deducted.

Social security contributions in the United Kingdom are known as NICs (National Insurance Contributions), they are paid in respect of everyone in the working population who is actually at work. Class 1 NICs are paid in respect of an employed earner, provided his earnings exceed the « lower earnings limit ». Class 1 NICs consist of two parts primary and secondary contributions. Primary

(53) See Annex 3
(54) See Annex 4
(55) See Annex 5

contributions are earnings-related contributions paid by the employee on his earnings, which is deducted by the employer from salary under the PAYE (Pay-As-You-Earn system and accounted for to the Collector of Taxes. Secondary contributions are payable by the employer and expressed as a percentage of the employee's earnings.

German wage tax must be withheld by employers from salaries. This tax is a prepayment of the final income tax due by the employee. In Spain employment income, including pensions, is subject to withholding tax at the general progressive rates used for the annual income tax. Furthermore, UK employs a rather elaborate and complex system for withholding tax at source from wages and salaries, the PAYE system. It aims to secure that the exact amount of the employee's income tax liability on employment income will have been withheld by the end of the tax year.

Finally, concerning unilateral double taxation relief, The UK domestic law provisions granting unilateral relief from double taxation are contained in the TIOPA 2010[56] (Taxation International and Other Provisions Act), they mainly promotes credit method. Spain and Germany also use the ordinary credit method as a unilateral measure for the avoidance of double taxation of income. According to Article 80 of the LIRPF, under this method a Spanish taxpayer with foreign-source income may credit against his local tax liability on worldwide income the lower of : the tax paid abroad on the foreign-source income or capital gains. Any foreign tax paid, either through withholding or assessment, which is similar in character to the Spanish income tax may be credited, and the Spanish income tax attributable to the foreign-source income or capital gains.

Beyond the employment income they generate, image rights constitute an important part of the income of professional footballers.

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(56) Taxation International and Other Provisions Act, 2010

Subtitle 2. Taxation of income generated by the exploitation of the image rights of professional footballers

Taxation of the exploitation of image rights is a complex matter. Firstly, the countries under study do not have the same definition of the expression « image right ». Indeed, in Spain, image right in the literal sense is a fundamental right which is constitutionally protected[57]. In the UK, in contrast to a number of other countries, there is no legal concept of an « image right ». HMRC[58] defines as image right what is likely to be dependent on a bundle of different rights that may include, for example, contractual rights, popular with football players.

In the past, the remuneration of professional football players was largely limited to their sporting activity and the contracts between footballers and clubs included remuneration for the use the club made of their image. The income generated by the exploitation of the image rights of professional football players was therefore taxed on the basis of income tax. As the exploitation of the image rights of professional footballers now generates much more income, they have put in place tax strategies that allow them to be taxed at a lower tax rate than the income tax rate. Numerous recent scandals concerning the tax evasion of professional football players lead us to question the tax strategies. Also, it is therefore in the interest of states to regulate these practices.

This subtitle therefore does not attempt to unravel the complex taxation of image rights of European footballers, but to identify the main strategies employed by the latter (I) and the recent decisions taken by the tax authorities in an attempt to regulate them (II).

(57) Art.18.1 Spanish Constitution

(58) HMRC Internal Manual - Employment income : « image rights »

I. Main tax strategies employed

Image rights represent an important part of the income of professional footballers. It is therefore in their interest to reduce their tax burden by not declaring this income as income from employment. The most common tax strategy employed by professional footballers is to set up a company in their country of residence (A) or abroad (B).

A. Taxation of image rights as corporate tax

By creating companies, football players ensure that the income derived from the exploitation of image rights is taxed as corporate income, i.e. it is subject to corporation tax with the consequent tax savings. In Spain, in 2020 income is taxed on the basis of a progressive rate of up to 45%[59] while corporate tax has a general rate of 25%. This tax saving also represents a loss for the State.

The Spanish tax authorities therefore decided to limit this scheme by proposing Ley 13/1996 LIRPF, stating that the income from the professional activity had to be greater than 85% of the sum of this income and the amount the company received from the club in return for the image rights. This rule is called « Regla 85/15[60] ». Through this formula, 85% of the player's income will be taxed as employment income and will be integrated into the player's « general income tax base » of the IRPF and only the remaining 15% may be taxed at 25% as IS (Impuesto sobre sociedades) for corporate tax purposes.

So how can the income derived from the exploitation of image rights be taxed in Spain ? There are severals scheme. First if the football player transfer the image rights directly to the club or to a sponsor his income will be taxed as

(59) See Annex 5

(60) La fiscalidad de los derechos de imagen de los futbolistas, Deportes y Finanzas, 06/11/2014

income from movable capital in respect of IRPF. But if the football player assigns its image rights to a company , which is normally linked with him, and the company sells to the club, in respect to the 85/15 Rule, part of the income generated by the exploitation of image rights will be taxed under the IS (Corporate Tax). Finally if the footballer transfers his rights to a company and the company sells it to a sponsor, the 85/15 rule won't apply because the payment is realized by a third party distinct from the club so all revenues of image rights will be taxed under the IS (Corporate Tax).

In 2006 a new tax regulation on related transactions was approved, which establishes that these operations will be valued at market price. For several years, the tax authorities did not apply this rule in football, but in 2014 they have inspected many footballers on these tax schemes and considered that the 15% the club pays to the player's company for the image rights is the market price that the company should pay to the player for giving him the exploitation of these rights. The consequence is that the player ends up paying the maximum rate of income tax of 52% for 100% of what the club pays him. Some tax experts[61] questioned the clarity of the tax provisions concerning the image rights of professional footballers, asking the administration to clarify the standards. As for Rule 85/15, they felt that it had become "empty of content".

In France, the same tax scheme exists. Football players of major French clubs also use image rights management companies to avoid being taxed under income tax on the income generated by the exploitation of these rights. However most of these companies are established outside France especially in low-tax countries, their called « Rent-a-Star companies ».

(61) Hacienda lanza una ofensiva contra los abusos fiscales del fútbol español, El País, 16/11/2014

B. Taxation of image rights through offshore companies

This method is the best known because it is the most controversial. Journalists are in the habit of denouncing the "abusive practices" of professional footballers creating companies abroad to manage their image rights. We are therefore going to study the model for the creation of these off-shore companies.

Football players resident in France often use the « Rent-a-Star compagnies » scheme to avoid being taxed under French income tax on the income generated by the exploitation of these rights. The idea is to create a company outside France. Once the company has been set up abroad, the sportsman concedes the right to exploit his image to the company. In order to receive income in turn, the company holding the rights can either exploit the image directly or in turn transfer the exploitation right to another company (usually the employing football club) in exchange for a fee. The company then receives income for any exploitation of the image of the footballer (jersey, derivative products) for which it holds the rights. Finally it pays the footballer low royalties.

This practice is not illegal, but in order to regulate it Article 155 A of the CGI[62] provides that the sums received by a person domiciled or established outside France (the company) in remuneration for services rendered by one or more persons domiciled or established in France (the footballer) are taxable in the name of the latter when they directly or indirectly control the person receiving the remuneration for the services, where they do not establish that the person concerned is engaged predominantly in an industrial or commercial activity, other than the provision of services, or where the person receiving remuneration for services is domiciled or established in a foreign State or a territory outside France where he is subject to a preferential tax regime.

(62) Article 155 A of the French General Tax Code

So the footballer will be liable if the company benefits from a privileged tax regime, if he directly or indirectly manages the company or if the company does not predominantly carry out an industrial or commercial activity other than the exploitation of the player's image. Tax schemes whose sole purpose is tax evasion will be sanctioned on the basis of Article L. 64 A of the Tax Procedure Book[63] (Livre des Procédures Fiscales) for abuse of tax law. In practice, companies created abroad pass the viability tests, however the fact that the footballer manages it from France may not pass.

It is also common in the United Kingdom to transfer the exploitation of their image rights to companies[64] and some English clubs have sometimes overused this scheme to pay their players. Between 2016 and 2018, the number of football players based in the U.K. setting up compagnies to exploit their image rights increased around 80%[65] and now more than 180 players of the Premier League use this scheme. At the time, the United Kingdom was exempting foreign income not repatriated to the United Kingdom without too much constraint. GAAR (General Anti-Abuse Rule) helps recognize tax avoidance schemes.

II. Taxation through a separate contract with the employing club

In order to limit abusive practices, the British (A) and French (B) tax authorities recently introduced a tax standard allowing clubs to conclude contracts with footballers for the management of their image rights.

(63) Article L.64 A of the French Tax Procedure Book

(64) HMRC Internal Manual - Employment income : use of an image rights company

(65) Kevin Offer, « The Taxation of Image Rights », ITSG Global Tax Journal, May 2018

A. In the United Kingdom

HMRC declared in 2017, they were investigating more than hundred football players over their use of tax avoidance scheme, including image rights companies. Later the UK Budget statement said that HMRC would publish guidelines to employers who makes payments of image rights to their employees in order to improve the clarity of the existing rules.

The UK's HM Treasury Minute 36th report of Session 2016-2017[66] exposed the Committee of Public Acounts' conclusions, it considers that « the rules on 'image rights' as they are applied in football and some other industries are being exploited » and that the Government should take urgent action to address image rights taxation. This must be included in the next Finance Bill to ensure this tax revenue is no longer lost. The Government responds that « it is aware that some employers make image rights payments under separate contractual arrangements to those that generate employment income » and Spring Budget 2017 will announce that the Department will publish guidelines for employers who make payments for image rights to their employees, to help employers understand how these payments should be taxed. By this they consider making new guidance publicly available will improve compliance.

HMRC published guidance on image rights payments[67] but according to Kevin Offer, this document is short and doesn't really contain « guidance »[68]. It only establishes that payments for the use of an individual's image rights can be taxed as professional income if payments are made to self-employed individual, as earnings and not payments for the use of image rights if payments are made to employees for the duties of an individual's employment and for those paid to U.K. companies it will gave rise to a liability to UK Corporation tax on profits.

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(66) HM Treasury Minute - 36th report of Session 2016-17- Collecting tax from high net worth individuals

(67) HMRC Guidance - Tax on payments for use of image rights

(68) Kevin Offer, « The Taxation of Image Rights », ITSG Global Tax Journal, May 2018

B. In France

On the other hand, France has introduced into the Sports Code new options on image rights. In fact Article 17 of Law 2017-261, so-called « Loi Braillard » of 1 March 2017 inserted article L.222-2-10-169 which provides that clubs « may conclude a contract with an athlete or professional trainer whom it employs for the commercial exploitation of his or her image, name or voice ».

It was then the decree implementing Article 17, of 1 August 2018, which made effective the possibility for professional sports clubs to pay part of the remuneration of their players and trainers in the form of income from image rights. Consequently, income from the exploitation of image rights will not be subject to the same rules as their remuneration for their sporting services.

Until this, clubs could pay their players for playing football only[70], these provisions allow the club to make savings because these remunerations will be exempt from employer's charges. They will therefore be able to pay footballers more, which makes the country more attractive to foreign players and the clubs will be able to make greater investments. French government wanted to improve the competitiveness of French professional sport by reducing the social charges that constrain clubs.

However, this rule may not prevent cases of tax avoidance, at least as far as footballers are concerned, as these measures do not apply to them.

(69) Article L.222-2-10-1, French Sport Code

(70) Claudia Massa, Michel Collet, « Separate sports image rights agreement with employers now possible in France ».

CONCLUSION

To conclude, the taxation of professional football players in Europe is a complex topic of interest to many tax practitioners.

Although European countries have different ways of determining the tax residence of their nationals, it is nevertheless relatively easy to determine the tax residence of football players despite their different transfers. In the same way, double taxation treaties generally fulfill their promise whether they follow the OECD model or not. The provisions are clear and leave no doubt as to the taxation of the income of professional football players when they participate to European and international competitions.

Furthermore, the income of professional footballers strictly limited to their sporting activity is largely taxed according to the general income tax rules in the countries under consideration. The countries under study have varied tax regimes, which may lead a professional footballer to take into account the tax aspect when considering joining a particular club. In pursuit of competitiveness, some States have set up tax incentives to persons acquiring tax residence in their territory. These particularities exist in Italy and France in respect of footballers acquiring tax residence in those countries.

The most complex challenge lies in the taxation of rights in the image of professional footballers, as tax optimisation strategies have multiplied and often led to abuses. Today, States and more generally the European Union and the OECD are putting in place measures to combat these abuses. States have adopted the OECD's recommendations on the automatic exchange of information enabling them to limit cases of tax evasion. The DAC 6 Directive, which obliges countries to transfer information to each other, is in the process of being transposed into the domestic law of the Member States of the European Union.

The European Union also advocates uniformity of regimes to combat tax fraud and tax evasion. The European institution calls on its members to coordinate more in order to protect their tax bases and recover the billions of euros to which they are legitimately entitled. This fight is based on the G20 commitments made at the Mexico City summit in 2012, which have since led to the BEPS (Base Erosion and Profit Shifting) project led by the OECD and involving some 100 countries. In the European Union, this is reflected in the attempt to define a « Common Consolidated Corporate Tax Base ». It would provide a single set of rules for determining a company's taxable income within the EU and avoid playing on legal niceties from one country to another.

However, this unification of rules, which is a necessary step, does not mean a common tax rate which remains the prerogative of each member.

Finally, it is important to point out that very often the taxation of professional players is a club issue, as contract negotiations often take into account the tax dimension and players receive in addition to their salary an addition that will be taxed.

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ANNEXES

ANNEX 1 (French Income Tax Rate)

For the 2020 assessment of income earned in 2019, the progressive income tax rates are as follows (article 197 of the CGI):

Taxable income per *part* (EUR)			**Rate (%)**
Up to		10,064	0
10,065	–	27,794	14
27,795	–	74,517	30
74,518	–	157,806	41
Over		157,806	45

Source : IBFD Individual Taxation Guide - France

ANNEX 2 (Italian Income Tax Rate)

The following progressive individual income tax rates have been applicable since 2007 (article 11 of the TUIR):

Income (EUR)			**Rate (%)**
Up to		15,000	23
15,001	–	28,000	27
28,001	–	55,000	38
55,001	–	75,000	41
Over		75,000	43

Source : IBFD Individual Taxation Guide - Italy

ANNEX 3 (UK Income Tax Rate)

For 2018/19 and 2019/20, the main rate structure (excluding dividend income) for the United Kingdom (excluding Scotland) is as follows:

	Income tax band (GBP): 2018/19			Income tax band (GBP): 2019/20		
Basic rate (20%)	0	–	34,500	0	–	37,500
Higher rate (40%)	34,501	–	150,000	37,501	–	150,000
Additional rate (45%)	Over		150,000	Over		150,000

Source : IBFD Individual Taxation Guide - United Kingdom

ANNEX 4 (German Income Tax Rate)

1.9.1. Income and capital gains

Individual income tax is imposed at progressive rates under complex tables (section 32a of the EStG). Abbreviated tables are presented below (for 2020). The 5.5% solidarity surcharge is levied on the amount of tax computed according to the tables. Capital gains are generally taxed at normal rates (*see*, however, section 1.6.).

1.9.1.1. Single taxpayers

Annual taxable income (EUR)			Marginal rate (%)			Tax payable (EUR)		
Up to		9,408	0			0		
9,409	–	14,532	14.00	–	23.97	0	–	973
14,533	–	57,051	23.97	–	42	973	–	14,998
57,052	–	270,500	42			14,998	–	104,646
Over		270,500	45			104,646		

Source : IBFD Individual Taxation Guide - Germany

ANNEX 5 (Spanish Income Tax Rate)

For income year 2019 (assessment year 2020), the following progressive rates apply (article 63.1 and 74 of the LIRPF):

Taxable income (EUR)			Tax on lower amount (EUR)	Rate on excess (%)
Up to		12,450	0	19
12,450	–	20,200	2,365.50	24
20,200	–	35,200	4,225.50	30
35,200	–	60,000	8,725.50	37
Over		60,000	17,901.50	45

Source : IBFD Individual Taxation Guide - Spain