ESTUDIOS

INTERNATIONAL TRANSFERS OF FOOTBALL PLAYERS

TAX ASPECTS TO BE CONSIDERED BY PLAYERS AND CLUBS

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1. INTRODUCTION

In accordance with the general approach of this work, in this chapter we are going to address the most relevant aspects to be taken into consideration in relation to the personal taxation of football players under the PIT.

In addition, we will briefly analyse the possible taxation in Spanish territory of the income that the club of origin may obtain as a result of the transfer of the player to the destination club.

It is worth bearing in mind, as we will develop below, that, as far as the PIT is concerned, Spanish legislation provides for two rules that are of the utmost importance, especially in the year in which the player is signed from a foreign club or is transferred to a foreign club.

We refer to the fact that individuals resident for tax purposes in Spanish territory are taxed on their worldwide income, that is, on all their income regardless of where it has been generated; and they are residents throughout the whole calendar year, i.e., the resident individual is taxed on all income generated from 1 January to 31 December of each year.

However, individuals who are not resident in Spanish territory, in general, will only be taxed on income from Spanish source.

In addition, residents will be taxed at a much higher tax rate than non-residents.

Therefore, in the year of arrival in Spain and the year of departure from our territory, it will be essential to analyse whether, taking into account the taxation in Spain for residents and non-residents and the tax rules in the country of origin or destination, respectively, it will be advisable or not to acquire residence (or to keep or not to keep residence) and therefore delay or not to delay the signing of the player in the calendar year.

Without prejudice to the above, we will analyse in this chapter those specific issues of our regulations that affect the taxation of football players and that may lead to possible tax savings in certain cases.

Finally, we will enter into the analysis of the potential taxation of the club of origin in Spanish territory as a result of the transfer of the player which, as we will see, differs in certain cases of great importance from that which occurs at a comparative level.

2. STANDARD TAX RESIDENCE RULES APPLICABLE TO FOOTBALL PLAYERS

The fact of being classed as a Spanish tax resident (as opposed to non-resident for tax purposes) is decisive when determining the extent of an individual's tax obligations in Spain for direct taxation purposes (i.e., PIT or Non-Resident Income tax, Wealth tax, Temporary Solidarity tax on Large Fortunes or Inheritance tax).

Focusing, as far as we are concerned here, on the taxes levied on income; i.e., PIT or NRIT, the main difference lies in the fact that, while PIT taxpayers are taxed in Spain on all the income they obtain during the calendar year, regardless of where it was obtained (in Spain or abroad), NRIT taxpayers are taxed only on income deemed to have been obtained in Spanish territory.

Tax residence in Spain is determined in each tax period, which coincides with the calendar year, except in the case of death. Therefore, if an individual is considered tax resident in Spain for a given tax period, they will retain such status for the entire tax period, running from January 1 through to December 31.

In general, according to PIT regulations, individuals who are habitually resident in Spanish territory are considered to be taxpayers, whether they are Spanish or foreign nationals.

The rules for determining the habitual residence of a taxpayer are set out in article 9 of the PIT Law[1], according to which the taxpayer is deemed to be resident for tax purposes in Spanish territory in any of the following circumstances:

- The individual stays for more than 183 days, during the calendar year, in Spanish territory.

  In order to determine this period of residence in Spanish territory, sporadic absences abroad are also computed as periods in which the taxpayer is deemed to have remained in Spanish territory.

  Absences are always presumed to be sporadic until proof of tax residence in another country is provided, normally by means of a certificate of tax residence issued by the competent tax authorities.

  In the case of countries or territories classed as tax havens, the STA may require proof of residence for 183 days during the calendar year.

- The main core or base of the individual's activities or economic interests is located, directly or indirectly, in Spain.

  The core of the taxpayer's economic interests is an indeterminate concept (*concepto jurídico indeterminado*), which makes no reference to personal ties other than those of a purely economic nature.

  This criterion for determining tax residence may be understood as attributing the taxpayer's residence to, for example, the place where they obtain most of their income (the "income" approach), the place

1. Law 35/2006 of November 26, 2006, on Personal Income Tax and partially amending the Laws on Corporate Income Tax, Non-Resident Income Tax and Wealth Tax.

where most of their investments are located, where the headquarters of their business is located, or from where they manage their assets (the "wealth" approach) or spend their money.

- The individual's spouse, from whom they are not legally separated, and dependent minor children have their habitual residence in Spain, unless proof to the contrary is provided by the taxpayer.

  This is a rebuttable presumption, i.e., it can be proved otherwise (*iuris tantum*). Thus, any interested party can provide evidence to rule out their status as a Spanish tax resident, even if their family nucleus is resident for tax purposes in this country.

Finally, it is worth noting the existence of a special rule for determining tax residence in Spain, which is applicable to Spanish nationals (only) who change their place of residence to a non-cooperative jurisdiction (i.e., tax havens)[2] and by virtue of which they continue to be taxable under PIT regulations for the tax period in which the change of residence takes place and the following four tax periods.

This so-called "tax quarantine" rule means that individuals of Spanish nationality moving to tax havens do not lose their status as Spanish tax residents, even if they can prove their new tax residence in a country or territory classed as a tax haven.

3. TAX RATES APPLICABLE TO FOOTBALL PLAYERS FOR THE PURPOSE OF DIRECT TAXES ON INCOME

According to Spanish labour regulations, professional football players are linked to the clubs to which they provide their services by a special employment relationship governed by the provisions of Royal Decree 1006/1985 of June 26, 1985 regulating the special employment relationship of professional sportspersons ("RD 1006/85").

2. Pursuant to the provisions of Order HFP/115/2023 of February 9, 2023, determining the countries and territories, and harmful tax regimes, which are regarded as non-cooperative jurisdictions, the following countries or territories are classed as such: Anguilla, Emirate of the State of Bahrain, Barbados, Bermuda, Dominica, Fiji, Gibraltar, Guam, Guernsey, Isle of Man, Cayman Islands, Falkland Islands, Mariana Islands, Solomon Islands, Turks and Caicos Islands, British Virgin Islands, United States Virgin Islands, Jersey, Palau, Samoa (regarding the harmful tax regime (offshore business)), American Samoa, Seychelles, Trinidad y Tobago and Vanuatu.

The fact that this is an employment relationship means that the income obtained by footballers in respect of the job they do is classed, for tax purposes, as employment income subject to taxation in Spain. The applicable taxation depends on whether the footballer is considered resident in Spain for tax purposes or non-resident.

Regarding income from other sources that footballers may obtain (e.g., income from property investments, dividends, interest, income derived from the transfer of image rights, capital gains, etc.), it is also necessary to determine whether or not the football player is considered a Spanish tax resident.

Having said that, it should be stressed that, apart from the differences in the tax rates applicable to different kinds of income, the main difference between the taxation of a footballer who is a Spanish tax resident and a footballer considered not to be resident in Spain for tax purposes is that the former will be taxed on all income obtained during the tax period, regardless of where it was obtained (i.e., taxation of worldwide income), whereas the latter will only be taxed in Spain on income that is considered, pursuant to the NRIT regulations and the provisions of DTTs signed by Spain, to have been obtained in Spanish territory.

3.1. FOOTBALL PLAYER CONSIDERED A SPANISH TAX RESIDENT

As mentioned above, the worldwide income earned by a professional football player who is a Spanish tax resident is subject to Spanish PIT.

For PIT purposes, the income earned by a taxpayer is classed, as appropriate, as either "ordinary income" or "savings income".

According to the provisions of article 45 of the PIT Law, "ordinary income" includes income and capital gains and losses that are not regarded as "savings income", as well as "allocated" income (*imputaciones de renta*)[3].

3. The PIT Law provides for a series of cases in which the taxpayer, despite not receiving income as such, obtains deemed income for PIT purposes and is taxable on it. These special cases or regimes are: (i) the "allocation" of real estate income; (ii) the "allocation" of income under the international tax transparency regime; (iii) the "allocation" of income from the transfer of image rights; (iv) the taxation of partners or participants in collective investment institutions incorporated in countries or territories classed as tax havens; and (v) the taxation of Spanish and European economic interest groupings and temporary joint ventures (*agrupaciones de interés económico y uniones temporales de empresas*).
We will return to the regime for the "allocation" of income from the transfer of image rights in due course.

According to the provisions of article 46 of the PIT Law, the following constitute "savings income":

- The following income from capital:
  - Income obtained from investments in the equity of any type of entity (e.g. dividends).
  - Income obtained from the transfer to third parties of own capital (e.g. interest).
  - Income from capitalization transactions, and from life or disability insurance agreements.
- Capital gains and losses realized on the transfer of assets and rights.

The income and capital gains and losses that make up so-called "ordinary income" are defined in negative terms, as those which are not classed as "savings income", meaning that the following income and capital gains and losses must be included in "ordinary income":

- Employment income.
- Income from property investments.
- The following income from capital:
  - Income obtained from intellectual property when the taxpayer is not the author and that obtained from industrial property that is not utilized in the economic activities carried out by the taxpayer.
  - That deriving from the provision of technical assistance, unless such assistance is provided in the course of an economic activity.
  - Income from the leasing of movable property, businesses or mines, as well as income from subleasing received by the sublessor, when this does not constitute an economic activity.
  - Income from the transfer of image rights or from the consent or authorization given to use them, unless such transfer takes place in the context of an economic activity.
- Income from economic activities.
- Capital gains and losses not derived from the transfer of assets.

Having clarified the above, the tax rates applicable to the income, capital gains and allocations of income that make up the so-called "ordinary income" are as follows[4]:

Tax base € up to	Tax payable €	Rest of tax base € up to	Tax rate
0.00	0.00	12,450.00	19%
12,450.00	1,182.75	7,750.00	24%
20,200.00	2,112.75	15,000.00	30%
35,200.00	4,362.75	24,800.00	37%
60,000.00	8,950.75	240,000.00	45%
300,000.00	62,950.75	Thereafter	49%

In other words, in general, the income, capital gains and "allocations" of income that make up so-called "ordinary income" are taxed in accordance with the progressive PIT "ordinary tax rate scale" at tax rates ranging from 19% to 49%.

The tax rates applicable to the income from capital and capital gains that make up so-called "savings income" are as follows[5]:

Tax base € up to	Tax payable €	Rest of tax base € up to	Tax rate
0.00	0.00	6,000.00	19%
6,000.00	570.00	44,000.00	21%
50,000.00	5,190.00	150,000.00	23%
200,000.00	22,440.00	100,000.00	27%
300,000.00	35,940.00	Thereafter	30%

4. In Spain, the Autonomous Communities have legislative authority in the field of PIT with respect to, among other aspects, the determination of the applicable tax rates. This means that the applicable tax rates will be different depending on the Autonomous Community in which the taxpayer resides. For the purposes of this book, for the sake of simplicity, the tax rates shown are those that would be applicable were the tax rates of the State and the Autonomous Communities to coincide.
5. Again, for the purposes of this book, for the sake of simplicity, the tax rates shown are those that would be applicable were the tax rates of the State and the Autonomous Communities to coincide.

In other words, in general, income from capital and capital gains derived from transfers of assets that make up so-called "savings income" are taxed according to the progressive PIT "savings scale" at tax rates of between 19% and 30%.

3.2. FOOTBALL PLAYER CONSIDERED NON-RESIDENT FOR TAX PURPOSES IN SPAIN

A football player who is not resident in Spanish territory will only be taxed under NRIT in relation to income that is deemed to have been obtained in Spanish territory pursuant to any of the criteria or connection points referred to by Spanish legislation and the provisions of DTTs entered into by Spain.

As far as we are concerned here (since the list provided is not intended to be exhaustive), the following income is deemed to have been obtained in Spanish territory:

- Income from economic activities when it derives, directly or indirectly, from a personal performance in Spanish territory by artists and sportspersons, or from any other activity related to such performance, even when received by a person or entity other than the actual artist or sportsperson.
- Employment income.
- The following income from capital:
  - Dividends and other income deriving from investment in the equity of entities resident in Spain.
  - Interest and other income obtained from the transfer to third parties of own capital paid by persons or entities resident in Spanish territory, or by permanent establishments located therein, or paid in return for the provision of capital used in Spanish territory.
  - Royalties paid by persons or entities resident in Spanish territory or by permanent establishments situated in Spanish territory, or which are used in Spanish territory.
- Income derived, directly or indirectly, from real estate property situated in Spanish territory or from rights relating to such property.

- "Allocated" income imputed to taxpayers owning real estate property situated in Spanish territory which is not utilized in economic activities.
- Capital gains:
  - When they derive from securities issued by persons or entities resident in Spanish territory.
  - When they derive from assets other than securities located in Spanish territory or from rights which are to be fulfilled or exercised in Spanish territory.
  - When they derive, directly or indirectly, from real estate property situated in Spanish territory or from rights relating thereto.

Spanish-source income obtained by a professional football player who is not considered to be resident for tax purposes in Spain is taxable at a general rate of 24%.

However, in the case of taxpayers resident in another Member State of the EU or of the EEA with which there is an effective exchange of tax information, the tax rate is 19%.

Likewise, in general, income from capital or capital gains are taxable at 19% (irrespective of the tax residence of the recipient).

All of the above is without prejudice to the provisions of any DTTs signed by Spain which may be applicable.

4. SPECIAL TAX REGIME APPLICABLE TO INDIVIDUALS MOVING TO SPAIN ("INBOUND EXPATRIATES' REGIME")

The PIT Law provides for a special tax regime applicable to workers moving to Spanish territory ("inbound expatriates regime") which allows individuals acquiring tax residence in Spain, under certain circumstances, to opt to be taxed, in general, under NRIT rules, in the year in which the change of residence takes place and for the following five tax periods.

However, the regulations of that special regime currently in force expressly exclude from its scope of application professional sportspersons whose employment relationship is governed by the provisions of RD 1006/85, as is the case of professional footballers.

Consequently, the special tax regime provided for in the PIT Law is no longer applicable to professional football players (and also managers or coaches) moving to Spanish territory.

That said, the regime could be applicable to other types of personnel linked to professional sport, such as chief executive officers, sports directors, doctors or other types of employees of a sports club.

The main features of the inbound expatriate's regime currently in force in Spain are as follows:

Potential beneficiaries of the regime

According to the provisions of article 93.1 of the PIT Law, individuals who acquire Spanish tax residence as a result of their moving to Spanish territory may be beneficiaries of the inbound expatriate's regime when the following requirements are met:

- They have not been resident in Spain during the five tax periods prior to that in which they move to Spanish territory.
- The move to Spanish territory takes place, either in the first year of application of the regime or in the previous year, as a result of any of the following circumstances:
  - As a consequence of an employment contract, an ordinary or special[6] employment relationship, or a statutory relationship with an employer in Spain is initiated[7].
  - As a result of becoming the director of an entity.
  - As a consequence of pursuing in Spain an economic activity classed as an entrepreneurial activity[8].

6. Except for the special employment relationship of professional sportspersons regulated by RD 1006/85.
7. Likewise, this requirement is deemed met when the move is ordered by the employer and there is a transfer letter from the employer or when, without being ordered by the employer, the work activity is performed remotely, through the use, exclusively, of computer, telematic and telecommunications systems. In particular, this requirement is considered met in the case of employees holding the visa for international teleworking provided for in Law 14/2013 of September 27, 2013, on support for entrepreneurs and their internationalization.
8. In accordance with the procedure described in article 70 of Law 14/2013 of September 27, 2013, on support for entrepreneurs and their internationalization.

  - As a consequence of the performance in Spain of an economic activity by a highly qualified professional providing services to emerging companies within the meaning of article 3 of Law 28/2022 of December 21, 2022 on promotion of the ecosystem for startups, or carrying out training, research, development and innovation activities, for which they receive remuneration that accounts in total for more than 40% of their total business, professional and earned income.

- They do not obtain income that would be classed as being obtained through a permanent establishment in Spanish territory[9].

On the other hand, by virtue of the provisions of article 93.3 of the PIT Law, the spouse of a taxpayer who is availing themselves of the inbound expatriates regime, and their children under the age of 25, or of any age in the case of disability, or the parent of the children where there is no matrimonial tie, may also benefit from the inbound expatriates regime, maintaining their status as PIT taxpayers, provided that certain requirements are met.

Taxation regime

The taxation of persons applying the inbound expatriate's regime under NRIT, for the tax period in which the change of residence takes place and the following five tax periods, has the following special features:

- All employment income obtained by the taxpayer during the application of the special regime is deemed to have been obtained in Spanish territory.

- Only certain tax exemptions are applicable: specifically, the exemptions on earned income in kind referred to in article 42.3 of the PIT Law[10].

9. Except in the cases provided for in relation to the pursuit in Spain of (i) an economic activity classed as an entrepreneurial activity; or (ii) an economic activity carried out by a highly qualified professional providing services to start-ups or engaging in training, research, development and innovation activities.

10. Specifically, those relating to the delivery of products to employees at discounted prices in company canteens or cafeterias or staff discount stores; the use of goods intended for the social and cultural benefit of employees; premiums or contributions paid to insurance companies for sickness cover; the provision of pre-school, infant, primary, compulsory secondary, baccalaureate and vocational training education services by authorized educational centres for the children of employees, free of charge

- For settlement purposes, income obtained by the taxpayer in Spanish territory during the calendar year is taxable cumulatively, with no offsetting being possible.
- For taxation purposes, a distinction is drawn between:
  - Dividends and other income derived from ownership interests in the equity of an entity, interest and other income obtained from the transfer to third parties of own capital and capital gains realized upon the transfer of assets ("savings income"); these are taxable at rates ranging from 19% to 28%.
  - Other income ("ordinary income"), which is taxable at 24% (up to €600,000) and at 47% on the excess.
- Withholdings and prepayments constituting payments on account of the tax are to be made in accordance with NRIT regulations. However, the percentage for withholdings or prepayments on employment income is 24%. When remuneration paid by the same single payer of earned income during the calendar year exceeds €600,000, the withholding rate applicable to the excess is 47%.

5. SPECIAL TAX REGIME RELATED TO THE EXPLOITATION OF FOOTBALL PLAYERS' IMAGE RIGHTS

Article 18.1 of the Spanish Constitution recognizes and guarantees the right to honour, family privacy and the right to control one's own image, which are regarded as fundamental, inviolable rights intrinsic to the individual and to their dignity.

The legal regime governing these rights is developed through Organic Law 1/1982 of May 5, 1982, on civil protection of the right to honour, personal and family privacy, and the right to control one's own image.

Accordingly, the right to control one's own image is a personal and inalienable right protected by the Constitution, but it can have an economic content, since the holder of such right can economically exploit their image

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or at a price below the normal market price; amounts paid to entities providing public transport services in order to facilitate travel by employees between their places of residence and the workplace; the delivery to employees, free of charge or at a price below the normal market price, of shares in the company itself or other companies forming part of the corporate group.

or cede or consent to its economic exploitation by third parties; this can be defined as the right to capture and reproduce by any means the features that make a particular person recognizable (image, name and voice).

For PIT purposes, income derived from the transfer of image rights can be classed as:

- Income from capital, in general terms, is subject to the tax rates provided for in the progressive PIT "ordinary tax rate scale", with a specific WHT rate of 24% being applicable.
- Income from economic activities, when the footballer is involved in an organized structure made up of material and/or human resources, is subject to the tax rates provided for in the progressive PIT "ordinary tax rate scale".

The transfer of image rights by footballers to companies is possible (it therefore being the companies that would obtain the income derived from their exploitation), but the tax advantage of exploiting the image rights through a company is limited by virtue of the income "allocation" regime for the transfer of image rights provided for in the PIT Law.

The income "allocation" regime is applicable when the following requirements, among others, are met:

- The professional footballer transfers the right to exploit their image or consents to or authorizes its use by another person or entity, whether resident or non-resident (first transferee).
- The professional footballer provides their services to a person or entity within the scope of an employment relationship (the club or second transferee).
- The person or entity with which the footballer maintains the employment relationship, or any other person or entity linked to it, has obtained, through concerted acts with persons or entities, whether resident or non-resident, the transfer of the right to exploit, or consent or authorization for the use of, the professional footballer's image.

However, there is no income allocation for the purposes of the professional footballer's PIT when earned income obtained in the tax period by the footballer by virtue of the employment relationship is not

less than 85% of the sum of the aforementioned income plus the total consideration received by the first transferee for the transfer of image rights to the club or second transferee (commonly known as the "85/15 Rule").

The 85/15 Rule therefore requires a comparison of two figures:

- The gross employment income obtained by the individual (in this case, the player) in a tax period, as a result of the employment relationship.
- The sum of the aforementioned gross income obtained as a result of the employment relationship, plus the total consideration paid by the person or entity with which the employment relationship is established (in this case, the club), in order to obtain the transfer of the image right; such amount must also be linked to a tax period in order to ensure that the comparison is like-for-like.

If the first figure is not less than 85% of the second or, in other words, if the amount paid to the player or a third person as consideration for the transfer of the exploitation of their image rights, exceeds 15% of the amount arrived at by adding said consideration to the employment income paid by the employer/transferee of such rights, the player must include this total amount as "ordinary" income for PIT purposes.

When "allocation" is applicable, the tax paid by the first transferee that corresponds to the part of net income derived from the amount that is allocated in the footballer's PIT is deductible from the player's PIT payable.

This regime has been very controversial and has been subject to constant scrutiny by the Spanish Tax Authorities ("STA"), which has even queried structures for the transfer of image rights in which the quantitative thresholds provided for in the PIT Law were respected, based on the rules on related-party transactions.

The most recent case law, however, has confirmed that when the "allocation" regime for the transfer of image rights is not applicable, related-party transactions rules cannot be applied, as a special tax regime is applicable to the taxpayer by virtue of which the income paid by the employer for the transfer of image rights is allowed to be taxed at the level of the transferee entity.

6. OTHER TAX ADVANTAGES TO CONSIDER

6.1. OUTBOUND EXPATRIATES' REGIME

The Spanish PIT Law contemplates a rule that is of interest to players who acquire Spanish residence as a result of their signing for a Spanish club (year of arrival) or who maintain it in the last year they play for the Spanish club and are transferred to a foreign club (year of departure).

By virtue of this rule, as we will explain below, the player can leave up to €60,100 of tax-exempt income corresponding to the remuneration they obtain from the club of origin (in the year of arrival) or from the club of destination (in the year of departure).

In general terms, for the application of this exemption, which in most cases may be applied by players, the following requirements must be met:

- The work is carried out for a company or entity not resident in Spain (a foreign club).
- In the territory in which the work is carried out, a tax of an identical or analogous nature to the Spanish PIT is applied, and it is not a country or territory considered a tax haven. This requirement will be considered fulfilled when the country or territory in which the work is carried out has signed an agreement with Spain for the avoidance of international double taxation that contains an exchange of information clause.
- The exemption will apply to remuneration earned during the days of stay abroad, with a maximum limit of €60,100 per year.

6.2. CONTRIBUTIONS TO THE SOCIAL WELFARE PLAN FOR PROFESSIONAL ATHLETES

Professional athletes, such as football players from teams that are part of the Spanish first and second division A, can defer part of their income to the extent that they make contributions to the social welfare plan for professional athletes, and with the limit of the sum of the net income from work and economic activities received individually and up to a maximum amount of €24,250 per year.

The amounts contributed to the mutual society reduce the taxable base of the player in the exercise of his contribution and will be taxed when

the redemption of the same occurs, consequently producing a deferral of taxation.

No contributions will be accepted once the working life as a professional athlete ends or the loss of the status of high-level athlete occurs under the terms and conditions established by regulations.

The consolidated rights of mutual society members may only be exercised in the cases provided for in Law on the Regulation of Pension Plans and Funds[11], and, additionally, after one year has elapsed since the end of the working life of professional athletes or since the loss of their status as high-level athletes.

7. EXIT TAX

Spanish regulations provide for an exit tax, which could be applied in some cases of players who have been in Spain for many years, for the capital gain implicit in the value of the shares or participations that the taxpayer owns under certain requirements.

When the taxpayer loses his status due to a change of residence, the positive differences between the market value of the shares or participations of any type of entity owned by the taxpayer, and their acquisition value, will be considered capital gains, provided that the taxpayer had such status during at least ten of the fifteen tax periods prior to the last tax period that must be declared for this tax and any of the following circumstances occur:

- That the market value of the shares or participations exceeds, together, €4,000,000.
- When the provisions of the point above are not complied with, that on the accrual date of the last tax period to be declared for this tax, the percentage of participation in an entity is greater than 25%, provided that the market value of the shares or participations in the aforementioned entity referred exceeds €1,000,000.

Capital gains shall form part of the savings income and shall be imputed to the last tax period to be declared for PIT in Spain.

When the change of residence takes place to another Member State of the EU, or of the EEA with which there is an effective exchange of tax

11. Royal Legislative Decree 1/2002 of November 29, approving the revised text of the Pension Plans and Funds Regulation Law.

information, the capital gain must only be subject to self-assessment when any of the following circumstances occur within the period of ten years following the last one to be declared for this tax: (i) that the shares or participations are transferred *inter vivos*, (ii) that the taxpayer loses the status of resident in a Member State of the EU or the EEA, (iii) failure to comply with the obligation to notify the STA of the option for the application of the specialties provided for in the Law for these cases, the capital gain revealed, the State to which he transfers his residence, indicating the domicile as well as the subsequent variations, and the maintenance of ownership of the shares or participations.

8. TERMINATION OR BUY-OUT CLAUSES

The implementation of so-called "termination clauses" involves the termination of the contractual relationship between a player and their club through the payment by the player of the amount agreed upon in the termination clause, which is given to them by the club that intends to sign the player.

Labor regime

Article 16.1 of RD 1006/85 allows the club to claim from the player the amount stipulated in the termination clause when there is an early termination of the contract for reasons not attributable to the sports entity.

For these purposes, the judges and courts are competent to moderate such amount if they consider it excessive, based on criteria such as: (i) the circumstances from a sports perspective, (ii) the damage caused to the club, (iii) the reasons for the breaking of the contract, and (iv) other factors that the judge considers relevant.

It should be noted that RD 1006/1985 envisages secondary liability with respect to the payment of the amount of the termination clause, on the part of a club that hires the player during the year following the early termination of the contract with the previous sports entity by which they were employed.

On the other hand, if it is the club that wishes to terminate the player's contract in advance of its scheduled termination date, without there being any justification for this, it can only do so if there is an agreement with the player; the termination will otherwise be classed as unfair dismissal. In such

circumstances, the player is entitled to compensation, which in the absence of an agreement is set by the court, equivalent to at least two monthly payments of their periodic remuneration plus the corresponding proportional part of supplements for quality and quantity of work received during the last year, with periods of time of less than one year being prorated by months, per year of service. When setting the amount, consideration is given to the circumstances, and in particular those relating to remuneration not received by the player due to the early termination of their contract.

Tax regime

The tax treatment of the payment corresponding to the termination clause, according to the criterion established by the Directorate General of Taxes in its responses to binding consultations, is as follows:

- From an accounting and CIT point of view: the payment made by the new club to the player so that the player, in turn, can comply with the termination clause is treated in the same way as a payment made by the new club to the former club in the event of a transfer of the player when there is an agreement between the two clubs. In other words, it must be treated for accounting purposes as an intangible asset, to be recorded under the assets of the acquiring club stated at its acquisition price and which will be amortized during the duration of the contract.
- For PIT purposes: from the player's perspective, this transaction can be broken down into two steps:
  - The payment to the player of an amount equivalent to the amount of the termination clause by the club that intends to sign the player: insofar as said payment has no remunerative purpose deriving directly or indirectly from an employment relationship, present or future, being instead the payment of an amount necessary for the club to acquire an autonomous, intangible, transferable and economically valuable asset, it must be classed, at the level of the player, as a capital gain to be included as "ordinary" income for PIT purposes.
  - The payment of the termination clause by the footballer to the club with which they have the contractual relationship: to the extent that the payment of the compensation —whether made with the professional player's own funds or made after the

contribution of such funds by a third party, on behalf of the professional player— constitutes an obligation for the latter, it will be treated as a capital loss to be included under "ordinary" income for PIT purposes.

- For the purposes of VAT: the amount of the compensation does not represent the consideration for any transaction subject to VAT that the player may carry out in favour of the club that assumes its disbursement. Therefore, it can be concluded that there is no transaction subject to VAT derived from the amount paid to the player by the club so that it can be disbursed by the player.

9. TAXATION OF INTERNATIONAL TRANSFERS OF PLAYERS

According to FIFA Regulations on the Status and Transfer of Players, an International Transfer is considered to mean "the movement of the registration of a player from one association to another association".

In addition, pursuant to the provisions of the aforementioned Regulations, "Transfer Compensation" is understood to mean "a compensation which a new club of a player pays, or commits to pay to a player's former club, in exchange for the former club's acceptance to release the player from a binding contractual relationship".

In view of the above, pursuant to the FIFA Regulations, amounts paid by a club (that of destination) to another club (of origin) in order to be able to sign a player who has a contract with the latter, can be looked upon as an indemnity or, as stated in the Regulations, can be considered compensatory or remunerative in nature.

In any case, whether it is regarded as an indemnity, compensation or remuneration, the payment does not correspond in any case to the purchase of an asset, tangible or intangible, or to the purchase of a right. Actually, the payment occurs as a consequence of (in order to bring about) the waiver of the exercise of a right that determines the early termination of a contract and enables the player to sign.

However, the position of the Spanish Supreme Court at this respect is that the remuneration satisfied derives from the acquisition of the federative rights of the player from the club of origin and not to any potential indemnity as a consequence of any kind of damage caused by the early termination of the contract with the player.

Strictly from an accounting point of view, the selling club will obtain a result that will be equal, in general, to the difference between the net book value of the acquisition rights of the player subject to transfer and the sale price.

If the transferor is an entity resident for tax purposes in Spain, the result of the transaction will be taxable for CIT purposes without any special rule being applicable.

If the transferor is an entity not resident for tax purposes in Spain, a distinction can be drawn between the following situations:

International transfer of the player without there being a DTT between the foreign country involved and Spain

Since the transferor is an entity not resident in Spain for tax purposes, under NRIT rules, the income derived from the transfer of the player is classed as a capital gain or loss (as it is a variation in the value of the transferor's assets that becomes apparent on the occasion of an alteration in the composition of the same and that is not classed as income) that according to the positions of the STA and courts of justice is understood to have been obtained in Spanish territory as it derives from rights that must be complied with or are exercised in Spanish territory, and is therefore subject to NRIT.

Consequently, the result obtained will be taxed as a capital gain subject to NRIT, subject to taxation at the general rate of 24%. However, in the case of taxpayers resident in another Member State of the EU or the EEA with which there is an effective exchange of tax information, the tax rate is 19% without WHT.

As already mentioned, this has been the criterion established by the Directorate General of Taxes through its response to a binding consultation of August 5, 2014 (V2164-14) in which this body analysed the signing of a player from a Monaco club by a Spanish club[12].

International transfer of players where there exists a DTT signed by the foreign country involved and Spain

Without prejudice to the different scenarios that could arise depending on the wording of each of the DTTs signed by Spain, in general, the income

12. The Spanish Supreme Court issued a judgment in April 2024 in the same direction.

ESTUDIOS

International transfers of professional footballers are far more than sporting decisions. These transactions not only entail significant financial flows between football clubs, as well as between clubs and players, and across the different countries involved, but also raise important legal considerations, both from the point of view of sports Law and from the point of view of tax Law.

When signing a player, the taxation of both the player and the player's club of origin in the country of the destination club becomes a matter of the utmost relevance. Even the timing of the moves must be carefully observed as tax residence modifications may have a very significant impact in both players' compensation and clubs' economics.

To provide comprehensive insight into the tax implications associated with taxation of player signings, this book will examine the individual taxation of players within those jurisdictions that are especially active in the transfer market and host prominent football leagues.

Additionally, attention will be given to the potential taxation of the club of origin in the jurisdiction of the destination club, particularly regarding income generated from the transfer.

This is an essential reference book; highly recommended for anyone looking to master the global football transfer market.

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