



Football Transfers and Spanish Tax Administration

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The FIFA World Cup 2018 has just ended, and after the display of young talent, the revaluation of some players and the consolidation of yet others, clubs of the main European leagues have just started the “dance” of transfers of players. In Spain, the summer signing period started on July 1 and will end on August 31.

The National First Division League Championship, known as “La Liga”, is the highest Spanish men’s football category and the main club competition in the country. Given the international achievements of La Liga teams in recent years (Real Madrid won the Champions League 3 consecutive times, Atlético de Madrid and Sevilla won the Europa League recently, etc.), the Spanish football league is currently one of the best, and therefore it is one of the most appealing and preferred destinations for players from all over the world.

These sports achievements and the millions of euros paid in recent years for players’ salaries and signings have made the Spanish tax administration focus its attention on football. Most of the players in the main Spanish clubs have undergone tax inspections in recent years, and the outcomes of the inspections have often been made public, due to the media interest in football in Spain.

This has led to football players transfer transactions becoming as important as sports matters themselves, thus being an element requiring separate evaluation and analysis, particularly when involving the hiring of foreign football players by Spanish clubs.

The latest guidelines and interpretations that the tax administration, through its inspection bodies, is applying when inspecting the taxation on football players and the transactions associated with their recruitment by Spanish clubs follow.

Tax residency in Spain

One of the aspects that tax inspections have traditionally focused on is the player’s tax residency during his year of arrival and exit from the Spanish club, in order to establish the taxation owed in Spain.



The Spanish tax year is the same as the calendar year (from January 1 to December 31), and tax residency in Spain is obtained when (i) someone stays in Spain for more than 183 days during the calendar year (counting occasional absences, unless tax residency in another country can be proven), or (ii) the center or base of their economic activities or interests, directly or indirectly, is located in Spain.

In addition, Spanish regulations establish a presumption of tax residency (unless otherwise proven), when, in application of the criteria above, a spouse who is not legally separated from the player and any underage children who are his dependents reside in Spain.

If, through application of these criteria, a player is a tax resident in Spain, any income he makes will be subject to the Personal Income Tax (Impuesto sobre la Renta de las Personas Físicas, "IRPF"), and he will be taxed for his global income (i.e. regardless of where it originates and the player's place of residence), at a maximum marginal tax rate of 43.5%-48% (with respect to the income derived from his professional activity) and 23% (regarding his movable capital yields and capital gains). If the player is not a tax resident in Spain, he will only pay tax for the income understood to have been obtained in Spain, under the Non-Residents Income Tax, and usually at a 24% tax rate (on the income derived from his professional activity) and at a 19% rate (with respect to his movable capital yields and capital gains). Therefore, being a tax resident in Spain or not has a crucial impact on a player's taxation.

When the tax inspection verifies players' tax residency in the first and last year of their contract (as in the interim years there are no doubts as to his tax residency in Spain, in accordance with the 183-day criterion), it uses as evidence or as a sign of the player's tax residency in Spain, therefore entailing Income Tax taxation, the following circumstances of the player to which special attention should be paid: (i) the start and termination date of the contract with the club, (ii) the date of purchase or rent of his home, (iii) the date when the home supplies (power, gas, water, etc.) were contracted, (iv) the date when his children were registered for school, (v) the dates of public events in which the player has taken part in Spain, (vi) the dates of holiday stays (i.e. outside the football season) in Spain, and (vii) the dates of the medical examination and official presentation by the Spanish club.

In addition, a new development in this field is the interpretation that the Spanish tax inspection is making in the case of the signing bonus, or deferred payments established in the contract with the Spanish club. In those cases, where a significant part of the player's total remuneration is paid in the first or in the last year of the contract, the inspection is extending the player's tax residency to Spain even if the 183-day requirement or the requirement of having the center of his activities there are not met, whenever those payments represent the player's main income for that year. Therefore, when the Spanish club is the player's main payer for a given year, the inspection team understands that the player has his main center of economic interest in Spain, which entails his tax residency in Spain.



Payments for the exploitation of the players' image rights

Another issue that is currently under discussion and Spanish inspection teams are specially focusing on is the taxation of players' image rights. Image rights are usually exploited by a company (in which the player holds a more or less direct share) that is not established in Spain, and therefore is not subject to taxation in Spain.

It should be taken into account that, as the starting point, Spanish internal legislation does not prohibit the exploitation of players' image rights through companies.

Having said this, the Spanish Personal Income Tax Act, in a provision also known as the "85/15 rule", restricts to 15% the percentage that the company that owns the rights to the player's image can receive from the Spanish club. If the payment for the image is higher than that percentage, the entire amount paid to the company will be regarded as the player's income and will be taxed under his Income Tax, at the maximum marginal tax rate ranging between 43.5% and 48%.

As for income from the player's image coming from third parties other than the club (the player's personal sponsors, both sports and other sponsors), Spanish legislation does not establish any limitation similar to the above, so, a priori, that income could be taxed outside Spain.

However, in recent years the Spanish tax inspection department has carried out an in-depth campaign for the verification of the structures to exploit players' image through intermediary companies, questioning the global taxation derived from them when faced with any one (or several) of the following situations, which the inspection department regards as indicative of an irregular structure:

- The company exploiting the image is located in a tax haven or low-taxation territory;
- The date of assignment of the right to exploit the player's image to the company is near the date when the player was recruited by the Spanish club;
- There is no payment (or payment is minimal) to the player from the company that is assigned the image;
- The company does not have material and human means for the exploitation of the player's image and the company does not contribute any added value.

In these cases, the tax inspection department is regularizing the taxation for the income obtained by the companies exploiting the player's image, attributing them in their entirety to the player's Income Tax (i) through the system for taxation of related-party transactions (usually, when the company is a resident in Spain or in a European Union country) or (ii) considering that the structure is simulated (which is usual in the case of a company that is a resident outside the European Union or in a low-taxation territory).



What is new about the latest inspections is that the tax inspection department is also applying this regularization regarding the 15% paid by the clubs (under the 85/15 rule). This poses an apparent contradiction, given that, while this rule is expressly established in the Personal Income Tax Act (which leads to the understanding that the legislator continues to believe in the companies that exploit players' images), the inspection department seems to void it of content.

The consequence, in any case, is the allocation to the player's Personal Income Tax of the entire income obtained by the company, although the sanction, under the related-party transactions, is usually lower than that resulting from the existence of simulation (which may even lead to consideration as tax crime).

The Spanish tax administration's current position regarding the companies exploitation of the players' image rights makes the review and examination of the specific circumstances of each recruitment more than advisable, given that a players' taxation in Spain starts with his recruitment.

Payments to players' intermediaries

Another aspect on which the Spanish tax administration has focused in recent years and that should be considered when a player is recruited by a Spanish club, is the fiscal treatment of the payments made by the club to the FIFA intermediaries.

The usual practice in the recruitment of players has been the formalization by the buying club of a contract with the player (with the corresponding payment of his salary). The club also paid the intermediary's commission for the services provided in the transaction.

The tax inspection department has considered for some time that, as a general rule, the intermediary acts in representation of the player (with a contractual relation between them), so that payments to the agent made by clubs are nothing more than payments on behalf of the player (who is with whom the intermediary actually has a contractual relation and to whom the intermediary has provided his or her services).

This means a fiscal reclassification of the payment to the intermediary made by the club. Therefore, the inspection department understands that the amount paid by the club is nothing more than a higher salary for the player, to which the club should have applied the relevant withholding and payment charged to the player's Personal Income Tax. Furthermore, given the treatment of earned income in the Personal Income Tax, the payment to the intermediary by the player is not an expense that can be deducted from his earned income. The practical consequence is that, in the inspection department's view, the player must be taxed in his Personal Income Tax for the commission charged by the intermediary, at a maximum marginal tax rate ranging between 43.5% and 48%.



The inspection department's interpretation, which in some cases may be right, cannot be extensively applied to all cases and to all the instances of intermediation performed by agents, all the more so when the 2015 FIFA Regulation on Working with Intermediaries, which expressly allows an intermediary to represent both a player and a club in the same transaction. Therefore, the central factor to be considered in a potential regularization such as that proposed by the tax administration is who actually receives the intermediary's service and to what extent it can be understood to be provided to a club and a player.

Player transfers from Brazil or Argentina

Finally, it is worth drawing attention to the latest administrative interpretation regarding the taxation of player transfers to Spanish clubs. This is a case in which the club of origin is established in a state with which Spain has not entered a convention to prevent international double taxation, or in which such a convention establishes that capital gains can be subject to taxation in both countries. This is the case, for example, with Brazil and Argentina, countries that have traditionally exported players.

The origin of the tax inspection department's current position lies in binding ruling number V2164-14 of the Directorate General for Taxation, regarding the transfer of James Rodriguez from AS Monaco to Real Madrid.

In that ruling, the General Directorate of Taxation concluded that, to the extent that there was no convention to prevent international double taxation between Spain and Monaco and the Spanish legislation regulating non-residents' taxation allows taxation in Spain of gains obtained from the transfer of a right that can be exercised in Spain, the earnings obtained by AS Monaco from James Rodriguez's transfer were subject to taxation in Spain under the Non-Residents' Income Tax, at a 19% tax rate. This by considering that what was transferred was the federative right that allowed the player to be registered in Spain.

Based on this consultation, the tax inspection department is initiating inspections against the Brazilian and Argentinian clubs that transfer or loan players to Spanish clubs and demanding 19% of the amount of the transfer (or loan).

This is a very debatable interpretation with many questionable aspects from the legal point of view, on which the courts of justice will most likely have to rule. But if the administrative view is confirmed, to the extent that for selling clubs the tax paid in Spain is a non-recoverable cost, this will probably entail an increase in the price of transfers and loans to Spanish clubs, which might affect the competitiveness of La Liga with respect to the main global leagues.

To summarize all the above, for some years now, the Spanish tax inspection department has focused on the world of football and is very active in the verification of taxation in it, particularly the taxation of players. Players' tax residency, payments to intermediary companies that exploit players' image and payments to the agents involved in transfers, among others, are aspects that



have been regularized in recent years. All this has led to the current need for any transfer or loan of players to Spanish clubs to be carefully examined and considered from a tax point of view. Taxation has become a key factor in the recruitment of players in Spain.