derived by high-performance sportspeople. According to Art. 12 of PIT Code, the following income is exempt:

- Grants awarded to high performance sports practitioners by the Portuguese Olympic and Paralympic Committees under the contract-program for preparation for the Olympic Games and sports federation.
- Grants for sports training granted by sports federations recognized by ministerial order of the Minister of Finance and the Sports Minister, to non-professional sports agents, including practitioners, judges and referees up to a maximum annual amount of five times the national minimum monthly wage.
- Prizes for high performance sportspeople and coaches, for relevant results achieved in high prestige sports competitions, including Olympic and Paralympic Games, World Cup or European championships.

SPAIN

FÉLIX PLAZA, JOSÉ MARÍA COBOS, ANA CARRETE and ANTONIO HERNÁNDEZ-BRIZ

Garrigues Sports & Entertainment

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1. Introduction

At a personal taxation level, Spanish legislation currently contains some special rules that are applicable to, among others, a very particular group of people as are professional sportspeople.

In this regard, we analyze below the current legislative framework applicable to the income or revenues derived from the exploitation of one's own image rights both at a national and an international level through the practice of interposing companies, the residence requirements, and the election to be taxed as a non-tax-resident in Spain, as well as the exemptions provided by domestic legislation that are applicable to the sports world.

2. Image right licensing arrangements

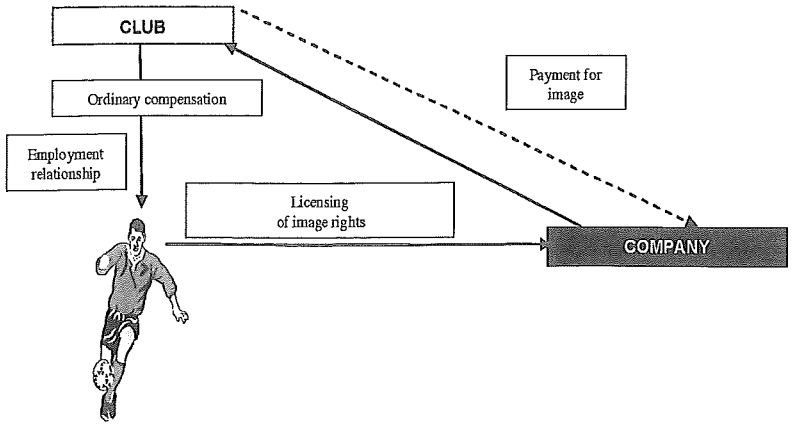
In general terms, the licensing by the sportsperson of the right to exploit his or her image or of the consent or authorization for its use is taxable as income from movable capital unless such licensing takes place within the context of an economic activity, in which case it will be classified as economic activity income. In both cases, the income is taxed in the hands of the sportsperson at his or her marginal rate (capped at 43%), although in the case of being classified as income

derived from economic activity, certain expenses could be deducted.

Notwithstanding, in the past few years, the use of companies to exploit the image rights has become a generalized practice of sportspeople in Spain.

The licensing of image rights through companies operates as follows: the sportsperson licenses the right to exploit his or her image to a company which in turn licenses it to the club or sports company for which the sportsperson provides his or her sports-related services. In this way, the relationships derived from this type of arrangement would be the following:

- Employment relationship between the sportsperson and the employer relating to the provision of sports services.
- Relationship between the sportsperson and his or her company by virtue of which the former licenses the image right to the latter.
- Relationship between the employer, club or sports company, and the sportsperson's entity that licenses the exploitation of the image right so that the former may use the sportsperson's image.



Under this type of arrangement, which is allowed by Spanish tax legislation with certain requirements, part of the income derived from the exploitation of the sportsperson's or artiste's image is subject to corporate income tax (30% maximum rate, since 2008), rather than to personal income tax as would correspond to the sportsperson (43% maximum rate).

This arrangement is currently permitted by Spanish legislation provided that the salary income obtained under the employment relationship does not make up less than 85% of the sum of such income plus the income paid by the sportsperson's employer (individual or entity) to a third party for the licensing of the exploitation right or for the consent or authorization to use the sportsperson's or artiste's image.

Therefore, as long as the above-mentioned rule (85/15) is complied with, this type of arrangement may enable the sportsperson to obtain a tax saving since the income derived from the exploitation of his or her image is taxable at a lower rate (30%) than the rate that would apply if such income were obtained directly by the individual (43%).

MAXIMUM TAXATION (*):

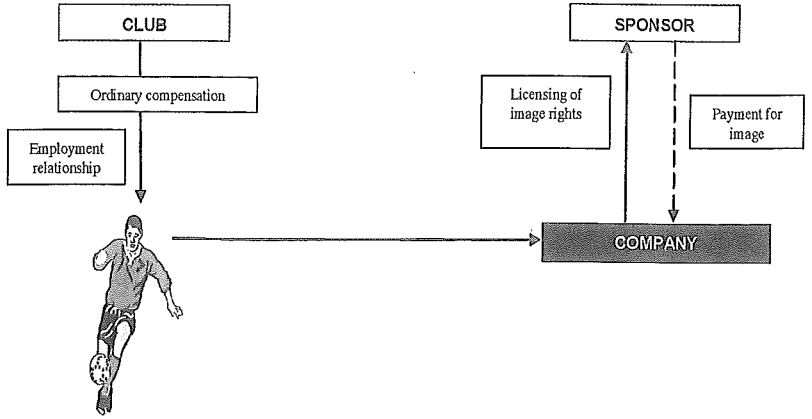
	FEDERATIVE EMPLOYMENT CONTRACT	IMAGE RIGHTS	EMPLOYMENT CONTRACT ONLY
INCOME	85	15	100
RATE	43%	30%	43%
TAX DUE	36.55	4.5	43
NET	48.45	10.5	57
TOTAL NET	58.95		57
With an 85/15 limit, through a company			

(*) Without considering deductible expenses at the company level

Nonetheless, in cases in which the 85/15 rule is not observed, the income derived from the exploitation of the image rights must be attributed to the individual, who will be taxed on the income at the maximum rate (43%).

Furthermore, where the sportsperson licenses his or her image rights directly to an independent sponsor that is unrelated to the club or sports corporation with which he or she has an employment relationship, the 85/15 limit will not apply and, thus, the total

consideration derived from the exploitation of his or her image rights may be obtained through his or her company, as shown here:



MAXIMUM TAXATION (*)(**)

	FEDERATIVE EMPLOYMENT CONTRACT	IMAGE RIGHTS
INCOME	50	50
RATE	43%	30%
TAX DUE	21.55	15
NET	28.5	35
TOTAL NET	63.5	
Without 85/15 limit through a company		

(*) Without considering deductible expenses at the company level
(**) Considering the same total income than in the previous example

Last, it must be considered that at the moment in which the sportsperson license his or her image rights to his or her entity a taxable income appears which will be taxed according to the general scale (maximum of 43%), although, in certain cases, with the possibility of applying a reduction of 40% on the taxable income.

Accordingly, this sort of tax planning must be considered in the long term to obtained the maximum benefit derived from it.

3. Value added tax on the licensing of image rights

The licensing of sportspeople's image rights by their companies to traders or professionals entails the provision of a service that is subject to and not exempt from value added tax (VAT) levied at the rate of 16%.

Although Spanish legislation does not expressly establish the tax treatment applicable to the licensing of image rights, the Spanish tax authorities have considered that this type of transaction is subject to the reverse charge mechanism established for copyrights and other similar rights (Article 56.1.a) by Commission Directive 2006/112/EC, of November 28, on the common system of value added tax), under which the transaction is deemed to be performed in Spain and, thus, subject to Spanish VAT when the recipient of the service is established in such territory.

4. Withholdings on image rights

In general, the withholding rate applicable to the income obtained on the licensing of image rights is 24%, regardless of the classification of the income and the recipient's state of residence.

However, in cases in which the recipient of the income is not resident in Spain, it will be necessary to analyze the issue in accordance with the tax treaties signed by Spain to avoid double taxation.

The tax treaties provide different categories in which to group income: business income, artiste's and sportsperson's income, royalties, and the residual clause for other income.

Classifying the income in one or another group is relevant from a tax point of view since:

- If the income is considered to constitute business income, it will not be subject to tax in Spain since, according to the rules contained in the tax treaties, the taxing power corresponds to the State in which the company receiving the income is resident.
- If the income is considered to derive from an artistic or sports performance, it may be taxable in the State where such performance takes place.
- If it is deemed royalties, the taxing power will be shared by both States, in such a way that the State of source may tax this income

up to a certain percentage which varies depending on whether the image rights fall within the category of literary work (reduced withholding rate of between 0% and 5%, in general) or another category (15% general withholding rate).

- If the income is some other type of income that is not specified anywhere else in the tax treaty, the taxing power corresponds to the State of residence of the recipient company.

In this regard, Spanish case law has considered that in most cases, the withholding rate applicable is the general rate corresponding to royalties[1]. However, recent decisions have classified the income derived from the exploitation of images as a modern form of licensing of the use of copyrights (decisions of the National Appellate Court dated September 25, 2007, and May 4, 2007, among others) and subject to the reduced withholding rate applicable to royalties derived from literary works.

5. Inbound expatriates regime

In Spain, without prejudice to tax treaty provisions, a person is considered tax resident if one of the following circumstances exists:

- He spends more than 183 days in Spain in the calendar year.
- The center of his economic interests is located in Spain.
- When the so-called center of his vital interests is in Spain.

In this regard, Spanish legislation establishes a rebuttable presumption pursuant to which, a person whose spouse (not legally separated) and underage dependent children reside in Spain is considered Spanish tax resident.

Despite the foregoing, where a Spanish national that is tax resident in Spain transfers his residence to a tax haven, he shall continue to be subject to Spanish personal income tax during the tax period in which such change of residence took place and the four following tax periods.

Spanish tax residents are subject to personal income tax according to a progressive scale of rates depending on their income level, with

1. Moreover, the same National Appellate Court, in a decision of July 18, 2007, classified the income obtained from the exploitation of the image as business income, therefore not subject to withholding.

a maximum rate of 43%. This scale is applicable for both employees and independent professionals, being the latest allowed to deduct certain expenses derived from his activity in order to determine the tax base which the scale is applied.

However, a regime was introduced in Spanish legislation under which individuals who acquire tax resident status in Spain as a consequence of their move to Spanish territory may choose to be subject to personal income tax (that is, applying the tax scale and being taxed at a maximum rate of 43%) or to nonresident income tax, during the tax period in which the change of residence takes place and the five following tax years (that is, being subject to a fixed 24% rate during six tax periods).

This regime is applicable to artistes and sportspeople, among others, provided they meet the following requirements:

- They have not been residents in Spain in the ten years prior to their move to Spanish territory.
- The move to Spanish territory arises as a consequence of an employment contract.
- Their work is effectively performed in Spain.
- Said work is performed for a company or entity resident in Spain or for a permanent establishment in Spain of a nonresident entity.
- The work income deriving from said employment relationship is not exempt from nonresident income tax.

Additionally, the individuals who choose to be taxed as nonresidents in Spain will be subject to net wealth tax, which entails that, as opposed to tax residents, a nonresident is only taxed on the assets and rights that are located, may be exercised or must be performed in Spain.

6. Exemption for work performed abroad: Expatriates' tax regime

Spanish legislation establishes an exemption for work performed abroad by taxpayers resident in Spain which may be applicable to sportspeople in the year in which they move their residence abroad or in the year of arrival if they were considered tax residents in Spain.

The requirements for applying this exemption, which amounts to € 60,100 annually, are as follows:

- The employee must be Spanish resident in accordance with the Personal Income Tax Law, that is, his principal residence must be located in Spain.
- The work must be effectively performed abroad for a company or entity not resident in Spain or for a permanent establishment located abroad.
- Where the entity that receives the expatriate's services is related to the entity that employs him or to that in which the individual performs his services, the following requirements established for the deduction of the expenses as support services provided between related entities must be met:
  - The services are or may be advantageous or of use to the recipient.
  - The territory in which the work is performed must apply a tax of an identical or similar nature to Spanish personal income tax, and it must not be legally classified as a tax haven.

7. Grants for high-performance sportspeople

As a means of fostering sports in Spain, Spanish legislation contains an exemption, of up to a maximum of € 60,100 annually, for monetary grants for sports training and technification received by people who are recognized as high-performance sportspeople.

The requirements for applying this exemption are as follows:

- The grants must be funded directly or indirectly by the National Council of Sports, the Olympic Sports Association, the Spanish Olympic Committee or the Spanish Paralympics Committee.
- The sportspeople must meet the requirements established in Royal Decree 1467/1997, of September 19, 1997, on high-performance sports.

Spanish legislation considers as high-performance sportspeople those referred to in the decisions adopted for such purpose by the Secretary of State-Chairman of the National Council of Sports, in collaboration with the Spanish sports federations and with the

autonomous communities, as the case may be. For these purposes, high-performance sports are deemed to be sports which are of interest to the State, in that they constitute an essential factor in the development of sports due to the stimulus they provide in promoting sports at a grassroots level, by virtue of the technical and scientific requirements necessary for their preparation and due to their function of representing Spain in official sporting competitions and trials of an international nature.

8. Pension plans (professional sportspeople mutual societies)

Spanish tax legislation offers personal income taxpayers the possibility of reducing their taxable income with the contributions they make to pension plans and other pension systems. In general, the amounts contributed usually cannot be recovered until retirement (usually at the age of 65), which is the moment when the amounts recovered will be taxed as salary income.

The amounts contributed and qualifying for the reduction cannot exceed the lower of the following amounts:

- € 10,000 per year in total. However, in the case of taxpayers over the age of 50, the amount will be € 12,500, or
- 30% of the sum of the net salary and economic activities income received individually in the year. This percentage will be 50% for individuals over the age of 50.

In addition, contributions can be made in favor of a spouse up to the maximum limit of € 2,000 per year, provided that the spouse does not obtain net salary and economic activities income or obtains them in an amount lower than € 8,000 per year.

Spanish legislation also offers a special regime for professional sportspeople and high-level sportspeople.

According to this regime, professional sportspeople and high-level sportspeople can make contributions to Professional Sportspersons Mutual Societies, which entitle them to a specific reduction in their taxable income for personal income tax purposes. The main characteristics of this special regime are the following:

- The contributions will be subject to the maximum limit of € 24,250 per year, including contributions from the sponsor that were attributed as salary income.

- Contributions will not be permitted under this special regime once the sportspa contributions to the mutual society but in accordance with the general regime already described.
- The vested rights will only be exercisable in the cases envisaged for serious disease or long-term unemployment plans. However, one year after the sportsperson has ended his or her working life as a professional sportsperson or has lost his or her status as a high-level sportsperson, he or she will be able to withdraw the amounts.

SWITZERLAND

STEPHANIE EICHENBERGER
Tax Partner

Contents: 1. Introduction.–2. Withholding tax on performance income by sportspeople.–3. Withholding tax on royalties.–4. Taxation of sportspeople resident in Switzerland.–5. Taxation of licensing companies in Switzerland.–6. VAT.

1. Introduction

In Switzerland there are very few specific legal provisions for the taxation of sportspeople (withholding tax on performance income). Otherwise, the general provisions for the taxation of individuals and corporations apply.

The following paragraphs contain an overview of the legal provisions and the practise of the tax authorities relevant for the taxation of sportspeople in Switzerland.

2. Withholding tax on performance income by sportspeople

Income from performances in Switzerland by non-resident sportspeople is subject to withholding tax ranging from 17% to 32% depending on the canton where the performance takes place.

The tax is levied on the gross remuneration less related costs. The gross remuneration includes any allowance, indemnity for expenses, benefit in kind like accommodation, catering or transport and any other benefit granted in exchange for the performance of the sportsperson in Switzerland.

In general, a lump-sum deduction of 20% on the gross remuneration is allowed for deduction as expense related to the performance. Higher effective costs may be claimed if evidence for such higher costs is provided to the tax authority.

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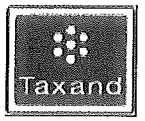

GUIDE ON SPORTSPERSON TAXATION IN CERTAIN RELEVANT JURISDICTIONS

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