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TAX GUIDE FOR SPORTS CLUBS, AGENTS AND ATHLETES: OVERVIEW AND COMMENTARY ON INFORMATION FROM THE TAX ADMINISTRATION

The taxation of Sports Clubs, Public Limited Sports companies, agents and athletes is becoming increasingly important, given the high amounts involved in the transaction of economic and sporting rights, as well as in remuneration, commissions and bonuses.

This Guide provides an overview of specific legal and tax issues relating to sports Clubs, agents and athletes, based on relevant information from the tax Administration.

Sports & Entertainment Desk

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INTRODUCTION

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This Guide provides an overview of specific legal and tax issues relating to Clubs, agents and athletes, based on relevant information from the tax Administration.

The Portuguese tax system, in the context of Sport, has some relevant specificities which are treated differently by the legislator and the tax Administration, and which therefore deserve individualised and automated treatment.

Nevertheless, this Guide is a general, non-exhaustive guide that deals with specific issues of Sports tax law and does not constitute or replace legal and tax advice, which should be provided considering the specificities of each individual case.

REVOCATION AND EARLY TERMINATION OF SPORTS CONTRACTS

The increasing complexity of sports phenomenon, particularly professional football competitions, has specific tax implications. Aware of this situation, the Portuguese tax Administration have produced some doctrine to clarify, in their understanding, the legal and tax framework applicable to various situations.

In this context, it is worth highlighting Circular No. 12/2011, from the Corporate Income Tax Services Directorate, which addresses the loss of value for sports entities resulting from the revocation or termination of a sports employment contract.

As is well known, among the most relevant assets of Clubs are the rights relating to the signing of professional players. This asset, like others, can increase in value over time, but it can also result in losses for the respective owner. This raised the question of whether Clubs or Public Limited Sports Companies could recognise this loss of value, or impairment, as an exceptional devaluation, or whether, on the contrary, they could only recognise as an expense the portion of the amortisation that had not yet been considered as such.

The concept of impairment loss is an accounting concept. It represents the excess of the carrying amount of an asset over its recoverable amount. However, not all impairment losses that are accepted under accounting standards are relevant for tax purposes. As a rule, tax legislators are more demanding, limiting the possibility for taxpayers to reduce their taxable income. Thus, only exceptional devaluations arising from abnormal and duly proven causes are accepted as impairment losses.

The question that arises here is whether the revocation or termination of a sports employment contract at a time earlier than initially planned represents (or does not represent) an "abnormal" or "exceptional" devaluation. It should be noted that the Corporate Income Tax Code considers, among other things, natural phenomena or exceptionally rapid technical innovations to be such. It seems, therefore, that the law provides that impairment losses with tax relevance will be those related to factors (totally) beyond the control of the taxpayer, such as the destruction of assets due to natural disasters, or assets that become obsolete as a result of technical innovations so significant that they exceed the normal useful life of the asset in question.

Thus, the tax Administration, assessing the concept of tax-accepted impairment loss, understood that, although unpredictable at the time of signing the contract, the termination of the sports employment contract still falls within the concept of a "management act", the purpose of which is, in particular, to reduce the costs associated with it and cannot, therefore, be considered as exceptional devaluation. In other words, to the extent that the Club or the Public Limited Sports Company expresses, in a more or less conditional manner, its willingness to revoke or terminate the sports employment contract prior to the end of the useful life of the asset in question, according to the tax Administration, the conditions required for the expense to be recognised under this tax regime for impairment losses are not met.

The tax Administration also understand that, in the event of termination of a sports employment contract before its expiry date, what is at issue is a change in the effective duration of the contract entered. Thus, once the duration of the contract has been changed, the Club or Public Limited Sports Company must recognise as an expense for that period the portion of the amortisation that has not yet been considered as such, which is identical to the solution proposed for cases of unilateral termination of the sports employment contract by the player or the sports entity. The Portuguese tax Administration therefore consider that the revocation and termination of sports employment contracts concluded between Clubs or Public Limited Sports Companies and players cannot be considered an abnormal or unusual situation in relation to the activity carried out, and do not meet the exceptional and extraordinary nature required for them to be considered a tax loss due to impairment.

Similarly, it seems possible to conclude (*a contrario*) that if the asset is devalued due to unforeseeable circumstances – e.g. injury occurring before the end of the contract's useful life – the conditions for the tax recognition of the expense as an impairment loss may be met, depending on a case-by-case analysis.

SPORTS PENALTIES

The Portuguese tax Administration have set out their understanding of the tax treatment of sports penalties for corporate income tax purposes in Circular No. 13/2011 of 19 May 2011, which is still in force.

Regarding the classification of these charges, the tax Administration consider that they cannot be regarded as a natural consequence of the normal exercise of economic activity, since they result from the incorrect behaviour of fans or the violation of sporting regulations. For this reason, at the time the circular was drafted, the tax Administration considered that these charges cannot, in general, be considered as expenses that are indispensable for the realisation of taxable income or for the maintenance of the source of income.

Currently, according to the Corporate Income Tax Code, all expenses and losses incurred or borne by the taxpayer to obtain or guarantee income subject to corporate income tax are considered tax-deductible expenses (and no longer those indispensable for the realisation of taxable income or for the maintenance of the source of production). Even so, and interpreting the current wording of the applicable rule, the understanding supported in 2011 by the tax Administration, which considers that sports penalty charges cannot be deducted as expenses, seems to remain consistent.

In addition, the tax Administration also state in the aforementioned Circular that, even if the costs of sports penalties could be considered as expenses, they would not be deductible. In fact, sports penalties arise from the exercise of powers by Sports Federations to sanction violations of duties and rules, as provided for in the Disciplinary Regime of Sports Federations of Public Utility, and therefore the disciplinary power to apply sports sanctions arises, in the opinion of the tax Administration, from the exercise of acts of a public nature, and not from mere contractual freedom between the parties.

In this regard, Law No. 2/2014, of January 2014, amended the Corporate Income Tax Code to expressly establish as non-deductible expenses for the determination of taxable income fines, penalties and other charges, including compensatory and default interest, for the commission of infringements of any nature that do not have a contractual origin, as well as for conduct contrary to any regulations on the exercise of the activity.

Although the Corporate Income Tax Code establishes that penalty charges are not deductible for the purposes of determining the taxable profit of the entities that bear them, it remains unclear what situations the tax Administration consider, even hypothetically, in which such charges effectively constitute expenses incurred to obtain taxable income, a question that only the case law of our courts will clarify.

REMUNERATION OF PLAYERS AND COACHES

To clarify the doubts raised by Sports Clubs as to whether the costs incurred with the remuneration earned by players and coaches - namely salaries, match bonuses and other employment income - can or cannot be considered "ordinary expenses" for the purposes of corporate income tax, the Portuguese tax Administration issued Circular No. 14/2011.

The classification of certain costs as "common expenses" is relevant insofar as the taxable income of private non-profit entities - such as Sports Clubs - is obtained by deducting such "common expenses" and other expenses attributable to taxable and non-exempt income, as well as certain tax benefits, from the overall income.

In this regard, it should be noted that tax law defines "common expenses" as those that are demonstrably indispensable for obtaining income that has not been taken into account for the purposes of determining the overall income subject to tax and that are not specifically linked to obtaining income that is not subject to or exempt from corporate income tax.

The tax Administration thus clarified their position, according to which the salaries of players and coaches do in fact constitute "common expenses" of Sports Clubs, insofar as they contribute not only to the obtaining of income from sporting activities, which is tax-exempt, but also to obtaining income from advertising and television broadcasts subject to corporate income tax.

This understanding is based on the observation that players and coaches are not only employees of Sports Clubs, but also a relevant component of the clubs' collective image, which is decisive for the sale of marketing products and television broadcasting rights, as well as for the conclusion of advertising contracts.

The tax Administration also clarify that, considering that the remuneration of players and coaches is a "common expense", its allocation to taxable and non-exempt income, i.e., in the case of Sports Clubs, to advertising and television broadcasting revenues, should be made using a proportional allocation criterion, or according to the criterion considered most appropriate, although in the latter case, only when this has been previously accepted by the tax Administration.

By accepting the aforementioned expenses of Sports Clubs as "common expenses", the tax Administration appear to have taken the appropriate position, as it would not be justified for such expenses not to be considered in determining the respective taxable amount, insofar as they are related to the obtaining of taxable and non-exempt income.

THE ACTIVITY OF SPORTS AGENTS

The role of sports agents has become very important in the sports world, particularly in football and, above all, in relation to transactions involving players' sports rights. They act on behalf of players, Sports Clubs or Public Limited Sports Companies, usually based on a mandate, in return for remuneration.

In this context, Circular No. 15/2011 was issued by the tax Administration, which remains in force, concerning the tax framework for the activity of sports agents in the conclusion of contracts for the transfer, acquisition and renewal of players' sports rights.

Considering that, both under the Legal Regime for Sports Player Contracts and under FIFA Regulations, it is established that it is incompatible for a sports agent and a players' agent to represent both parties to the contract, the tax Administration have clarified that when a sports agent acts on behalf of a player, the taxes, fees and other charges levied on the remuneration paid to the sports agent by Sports Clubs or Public Limited Sports Companies are not tax deductible.

In fact, in these cases, the sports agent's remuneration constitutes a third-party expense that neither the Sports Club nor the Public Limited Sports Company is legally authorised to bear. This is also the understanding advocated by the legislator, who expressly establishes as non-deductible expenses any taxes, fees and other levies imposed on third parties that the taxpayer is not legally obliged to bear.

On the contrary, when the sports agent represents the interests of the Sports Club or Public Limited Sports Company, based on a written representation or intermediation agreement, the Tax Administration considers that the remuneration paid to the sports agent may be considered as tax-deductible expenses, insofar as they effectively correspond to the provision of a service on their behalf. In this regard, the Tax Regime for Sports Companies has also established that the amortisation of intangible assets corresponding to the rights to sign professional players is accepted as an expense, including the amounts paid by the sports company to the entities holding the economic and sporting rights (i.e. sports agents) relating to the player as consideration for the transfer and the amounts paid by the sports club to the player himself and to agents or representatives in relation to the transfer of players.

However, the Portuguese tax Administration draw attention to specific cases in which the sports agent, the player and the Sports Club or Public Limited Sports Company enter into a tripartite agreement, under which, although the agent must act on behalf of the player, the sports club or Public Limited Sports Company assumes responsibility for paying the remuneration due to the agent. In these situations, it is understood that the payment of the

agent's remuneration is considered income from the player's own employment for income tax purposes and is therefore subject to taxation.

To this extent, the expense incurred by the Sports Club or Public Limited Sports Company may be considered as an expense incurred to obtain the respective income, and therefore deductible. In this regard, the Tax Regime for Sports Companies establishes that the amortisation of intangible assets corresponding to the rights to sign professional players, namely the amounts paid to the player himself for signing or renewing the contract (even if the amount is paid to the sports agent), are accepted as an expense.

With regard to VAT, the tax Administration clarified, through the aforementioned Circular, that the provision of intermediation services in the temporary or permanent transfer of a player, in cases where the player is the purchaser (i.e., a Business to Consumer – B2C) transaction), is subject to tax, regardless of the location of the registered office, permanent establishment or domicile of the sports agent, provided that the transaction to which the intermediation refers – i.e. the temporary or permanent transfer of the player – is subject to taxation in Portugal. If the transaction to which the intermediation refers is not subject to taxation in Portugal, there will be no VAT liability in Portugal.

If the purchaser of the intermediation services in the temporary or permanent transfer of a player is the Sports Club or the Public Limited Sports Company (i.e. in the case of a Business to Business – B2B transaction), and these are established in national territory, there will also be VAT liability in Portugal, regardless of the location of the registered office, permanent establishment or domicile of the sports entrepreneur.

With regard to the possibility of the Sports Club or Public Limited Sports Company deducting the VAT incurred from the tax levied on the taxable transactions they carry out, the tax Administration conclude that this is possible, provided that the provision of intermediation services corresponds to a service actually provided to the Sports Club or Public Limited Sports Company, under a representation contract. On the contrary, in cases where intermediation services are provided to the player himself, even though the remuneration paid to the sports agent is borne by the Sports Club or the Public Limited Sports Company, the tax Administration consider that VAT cannot be deducted, since the service was provided to the player, and not to the Sports Club or Public Limited Sports Company.

The understanding conveyed by the Portuguese tax Administration seems appropriate to the vicissitudes arising from the activity of sports agents and the way in which this activity affects Sports Club, Public Limited Sports Companies and players. The clarifications

provided are particularly relevant in the current context, in which transactions involving players' sporting rights generate increasingly high monetary flows.

THE TEMPORARY TRANSFER OF PLAYERS

The tax framework provided by the tax Administration and applicable to the temporary transfer of players is set out in Circular No. 16/2011, which distinguishes between temporary transfers made free of charge and those made for consideration.

In this context, therefore, it is the understanding of the tax Administration that, in general, temporary transfers of players should be considered to be carried out in the interests of the three parties involved: the player, the Sports Club or Public Limited Sports Company receiving the player, and the Sports Club or Public Limited Sports Company transferring the player.

In cases where the transfer is made free of charge (i.e., in cases where the transfer of the player does not involve any consideration from the transferee to the transferor, with the player's remuneration being paid by the transferor), the tax Administration consider that the expenses relating to remuneration and other charges relating to the player and incurred by the transferring entity, including the part relating to the amortisation of transfer rights, are tax deductible for corporate income tax purposes. This is also the understanding advocated by the legislator in the Tax Regime for Sports Clubs, which establishes that the amortisation of professional players' contracts is accepted as an expense, provided that they are registered in professional sports competitions in the service of other sports companies when there is a temporary transfer of players.

In terms of VAT, it is important to assess whether the provision of services embodied in the transfer of the player was or was not carried out for purposes unrelated to the interests of the transferring entity. In this context, as such player transfers are carried out in the interests of the three parties involved, the tax Administration consider that, in cases where the transfer is carried out for purposes that are not unrelated to the interests of the transferring entity – as we admit to be the case in most situations – there will be no VAT liability.

In the case of temporary transfers made for consideration (that is, in cases where the transfer involves consideration from the transferee to the transferor, either through the payment of a price or by assuming payment of all or part of the players' remuneration), the tax Administration consider even in this case, the expenses recognised by the transferor, including the portion relating to the amortisation of transfer rights, are considered deductible for corporate income tax purposes. And, as mentioned above, this is also the understanding advocated by the legislator in the Tax Regime for Sports Clubs, which

establishes that the amortisation of professional player contracts is accepted as an expense, if they are registered in professional sports competitions in the service of other sports companies when there is a temporary transfer of players.

Regarding VAT, as this is a service provided for consideration and in accordance with the applicable rules, taxation will apply whenever the transaction is considered to be located in Portugal. However, the Circular clarifies that, in cases where the consideration for the transfer corresponds to the exact reimbursement of remuneration and other charges, there should be no VAT liability, since, in accordance with the administrative understanding that has been conveyed, in these cases, it is not a provision of services.

Finally, the Circular clarifies that, in cases where the temporary transfer is part of the consideration for the acquisition of the economic and sporting rights of another player, the total value of the consideration will correspond not only to the cash portion, but also to the value relating to the temporary transfer, which must be determined on the basis of the documents relating to the underlying agreement.

THE TRANSFER OF ATHLETES' IMAGE RIGHTS

The tax framework applicable to income arising from the transfer of players' image rights, whether in the sphere of the player, the Sports club or the Public Limited Sports Company that acquires the image rights, or with non-resident entities that transfer such rights, is the subject of Circular No. 17/2011, which conveys the tax Administration understanding of some of the doubts raised by this regime.

Thus, regarding players' image rights, the tax Administration consider that a distinction should be made between the player's image rights as part of a team and the player's individual image rights. In the first case, and in accordance with the applicable legislation, image rights are implicitly transferred by the player to the Sports Club or Public Limited Sports Company when the sports contract is signed; these are the collective image rights relating to the player's image in connection with the Sports Club and the competitions in which the player participates. However, the exploitation of individual image rights, connected with the player's public image as a person and not linked to the Sports Club, may only be authorised by means of a specific contract for that purpose, "image rights assignment agreement", signed by the player and the Sports Club or Public Limited Sports Company.

It should be noted that, in accordance with the Specific Tax Regime for Sports Companies, the amounts paid by the Sports Company for the exploitation of the image rights of the players and coaches it has contracted are considered tax expenses in a percentage corresponding to 20% of the respective total.

In both cases – at team and individual level – the income earned by the player in return for granting his image rights to the Sports Club or Public Limited Sports Company with which he has a sports employment contract according to the understanding conveyed by the tax Administration, should be classified as income from dependent work (category A) for income tax purposes.

Income obtained by a player who transfers his image rights to a third party should be classified as capital income (category E), insofar as it is income from the exploitation of a personal right with patrimonial content, according to the same understanding of the tax Administration.

However, this classification is questionable, as it would probably be more appropriate to classify it as Category B income and income from the provision of services (income from self-employment), as provided for in the General Table attached to the IRS Code, when such image rights are transferred to third parties other than the club with which they have a sports employment contract, since, in this case, they should be classified as income from dependent work (Category A).

When the property rights of a player's image are held by a non-resident entity which, in turn, transfers such exploitation to a resident Sports Club or Sports Limited Company, with which the player enters into a sports employment contract, the income earned by the non-resident entity and arising from this transfer will be considered, according to the tax Administration, as income arising from the exercise of sporting activities and will be taxed under corporate income tax, by withholding at source, on a definitive basis, at a rate of 25%.

In the case of a Sports club or Public Limited Sports company that acquires from a non-resident entity the right to exploit the image rights of a player with whom it is going to sign a sports employment contract, the tax Administration consider that the latter must prove a "minimum adequacy" between the exploitation of such rights and the costs incurred in order for them to be considered tax-deductible expenses for corporate income tax purposes.

In terms of VAT, the acquisition by a Sports Club or Public Limited Sports Company from a non-resident entity of the right to exploit the image rights of a player with whom it is going to enter into a sports employment contract, in accordance with the rules applicable to business-to-business (B2B) transactions, is subject to this tax, and the corresponding tax must be self-assessed by the Sports Club or Public Limited Sports Company.

THE TRANSFER OF PLAYERS' ECONOMIC AND SPORTING RIGHTS

The tax framework for income obtained by entities not resident in Portuguese territory arising from the transfer of players' economic rights, as conveyed by the tax Administration, is the subject of Circular No. 18/2011.

For this purpose, sporting rights are those that arise from a sporting employment contract between a Sports Club or Public Limited Sports Company and a player. Sports economic rights, on the other hand, consist of the right to compensation demanded by a Sports Club or Public Limited Sports Company that has a sports employment contract with a player in order to release that player to another Sports Club or Public Limited Sports Company, thus allowing their transfer.

Given that the economic sports rights relating to a player (who is party to a sports employment contract) may be transferred, in whole or in part, to a third non-sports entity, without the player being transferred, the tax Administration consider that, in cases where the transfer of the player and the respective economic and sporting rights occurs from a non-resident sports entity to a resident Sports Club or Public Limited Sports Company, the income derived therefrom will not be taxed in Portugal, due to the absence of a connection between that income and the national territory. Accordingly, also in situations of player transfers involving non-resident non-sporting entities that present themselves as holders of a percentage of the players' "passes", the income arising therefrom will not be taxed, due to the lack of a connection with the national territory.

However, a different framework will apply to amounts paid to a non-sporting and non-resident entity following the transfer of the player and economic and sporting rights by a resident Sports Club or Public Limited Sports Company. In these cases, according to the same understanding conveyed by the tax Administration, the income paid is considered capital gains income and is taxable in Portugal, since the source of the income (the debtor's residence) is located in this territory, subject to withholding tax at a rate of 25% (without prejudice to the provisions of the Convention for the Avoidance of Double Taxation, if applicable).

If the player is "free", i.e. without a valid sports contract, and when a Sports Club or Public Limited Sports Company resident in Portugal acquires economic rights from a non-resident non-sports entity, understands that the tax Administration consider that these are economic rights that do not originate from sports rights. Thus, the conclusion of a future sports employment contract is subsumed under the right equivalent to the signing bonus that a player could demand for the conclusion of the new contract.

Therefore, any income obtained by a non-resident entity in return for signing a future sports employment contract with a resident Sports Club or Public Limited Sports Company should be considered income derived from the exercise of sports activities in Portuguese territory, subject to corporate income tax in Portugal, also through the application of the withholding tax mechanism, at a rate of 21%.

TAXATION OF REFEREES

In accordance with the provisions of the IRS Code, the determination of taxable income falling within Category B (professional and business income) of the IRS, under the simplified regime, is obtained by applying different coefficients to the income obtained by the taxpayer. These coefficients vary according to the nature of the income, namely if they relate to professional activities specifically provided for in the Table referred to in (Article 151 of) the IRS Code.

The activity of Referee is one of the activities that is not expressly provided for in the Table of the IRS Code and cannot be considered as covered by Activity Code 1323 - Sportsmen, so the coefficient of 0.35, relating to income from other services, should be applied.

The difference is significant, since if it is covered by Activity Code 1323 – Sportspeople, a coefficient of 0.75 applies (which is equivalent to the recognition of an automatic right to deduct expenses amounting to 25% of the income earned), whereas, otherwise, a coefficient of 0.35 applies (equivalent to the recognition of an automatic right to deduct expenses amounting to 65% of income earned).

This issue has been controversial in the past, and in 2020, the Supreme Administrative Court issued a ruling to standardise case law (Case No. 092/19.9BALSB), in which it concluded that the involvement and importance of referees in the staging of sporting events cannot be considered a determining factor in judging that such professionals are themselves sportspeople, otherwise everyone involved in sport would have to be considered a sportsperson. This includes "*not only referees, but also doctors, managers, agents, and other sports agents provided for in the Basic Law on Physical Activity and Sports*". What should be relevant for including a particular professional in the IRS Code Table is the specific activity they perform.

On this basis, the Supreme Administrative Court considers that there are no legal grounds for a broad interpretation of the professional activity of a sportsman, since the functions and tasks performed by a referee are not specifically included in that concept, nor are they confused with it.

STATE AID FOR TAX PURPOSES

In March 2021, the Court of Justice of the European Union ("CJEU") handed down a judgment on State aid in relation to corporation tax. The issue prior to the dispute concerned a decision by the General Court of the European Union, which annulled a decision by the European Commission, in which it was considered that the Spanish legal regime, through the legislative instrument regulating public limited sports companies and sports clubs, granted State aid to football clubs, namely considering the following football clubs to have benefited: Fútbol Club Barcelona, Real Madrid Fútbol Club, Club Atlético Osasuna and Athletic Club de Bilbao.

The origin of this dispute dates back to 1990, when "Ley 10/1990 del deporte" came into force, requiring all Spanish professional sports clubs to change their legal form, from Sports Clubs to Public Limited Sports Companies, with the aim of encouraging more responsible management of the clubs' activities. However, one of the amendments to this Law provided for an exception, allowing sports clubs that had posted positive results in the fiscal years prior to the adoption of the law to maintain their legal form as sports clubs. These clubs thus benefited from a special tax regime, given that, under the legal form of sports clubs, they are classified as non-profit legal entities and therefore subject to a special income tax rate which, until 2016, was lower than that applied to Public Limited Sports Companies.

Following an investigation by the European Commission into State aid (tax), it concluded, by Decision (EU) 2016/2391 of 4 July 2016, that "Ley 10/1990 del deporte" constituted State aid and was contrary to the principles of the internal market.

Consequently, the Decision stipulated that, for this purpose, the Kingdom of Spain should repeal the provision in question and recover the difference between the tax applied to sports clubs and that applied to Public Limited Sports Companies.

However, the Decision was appealed to the General Court by Fútbol Club Barcelona, which decided to annul the European Commission's Decision on the grounds that it had failed to demonstrate that the tax regime applicable to non-profit entities was likely to place its beneficiaries in a more advantageous position compared to the tax regime applicable to other sports clubs, which were operate as Public Limited Sports Companies.

Following the General Court's decision to annul the European Commission's decision that the Kingdom of Spain had granted State aid to the aforementioned sports clubs, the European Commission lodged an appeal with the Court of Justice, requesting the annulment of the General Court's judgment on the grounds of infringement of Article 107(1)

of the Treaty on the Functioning of the European Union ("TFEU"), i.e. the rule prohibiting State aid.

Firstly, the European Commission considered that the General Court had erred in law when assessing the criteria used by the European Commission to determine whether a tax scheme conferred an advantage on its beneficiaries and, therefore, whether that scheme was likely to constitute State aid within the meaning of the TFEU.

In this regard, the Court of Justice agreed with the European Commission, finding that the General Court had erred in law when it considered that its decision should focus simultaneously on the application of the State aid scheme and the individual aid schemes granted. For the Court of Justice, the contested measure had to be analysed in the light of the State aid scheme, i.e. by examining whether, taken as a whole and having regard to its specific characteristics, it was likely, at the time of its adoption, to lead to lower taxation than that resulting from the application of the general taxation scheme.

Accordingly, The Court of Justice held that the Commission had to carry out an overall assessment of that scheme, taking into account all its components and characteristics, both favourable and unfavourable to its beneficiaries, without, however, having to assess, in its analysis under the State Aid scheme, the question of the individual granting of benefits, which is merely a direct consequence of the application of the State Aid scheme itself.

The Court of Justice therefore concluded that, in order to determine the existence of State Aid in the case in question, the Commission should examine exclusively the criteria of the State Aid scheme at the time of the adoption of the tax scheme in question, without having to consider, at that stage, the individual aid actually granted on the basis of the scheme under review.

However, it also held that the European Commission was obliged, at the stage of any recovery of the advantage obtained on the basis of that State Aid scheme, to determine whether that scheme had actually conferred an advantage on its beneficiaries individually, since such recovery requires the exact amount of aid from which they actually benefited in each tax year to be determined.

On the basis of this reasoning, the Court held that the impossibility of determining the amount of the advantage at the time of the adoption of a State Aid scheme cannot prevent the Commission from finding that that scheme was likely to confer an advantage from that stage onwards, nor can it, correlatively, exempt the Member State concerned from notifying the European Commission prior to the implementation of the measures envisaged as possible State aid, as provided for in Article 108(3) TFEU.

In these terms and considering the facts underlying the case under review, the Court of Justice of the European Union concluded that "Ley 10/1990 del deporte", from the moment of its adoption, constituted a State aid scheme covered by Article 107(1) of the TFEU, since it granted certain clubs eligible for that scheme (such as Fútbol Club Barcelona) the possibility of continuing to operate, by way of derogation, as a non-profit-making entity and allowed them to benefit from a reduced rate of taxation compared to the regime applicable to clubs operating as Public Limited Sports Companies.

Also of relevance to the case, the Court examined the alleged absence of distortion of competition and violation of the presumption of innocence, the violation of the principles of protection of legitimate expectations and legal certainty, and also the apparent justification of the scheme in the internal logic of the Spanish tax system, in addition to the failure to comply with the procedure laid down for the recovery of existing aid, but However, it ruled that all these arguments were unfounded.

The Court of Justice thus decided to annul the judgment of the General Court, dismissing the appeal brought by FC Barcelona, upholding the European Commission's decision and considering that "Ley 10/1990 del deporte" constituted State Aid that was not permitted under European law.

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