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Tax Fraud Due to the Ambiguous Sportsman Tax Status

Florin BOGHEAN¹, Ioana ZUBAȘ²

Abstract

Sports activity has been analyzed over time by sociologists, doctors, sports analysts, and more recently by economists and lawyers. The overall objective of the paper is to tackle only a part of what would be generically called in foreign doctrine, sports accounting and its tax implications, namely the part that strictly aims at the athlete, as one of the main actors not only of sports activity in the sense of competition, but also in terms of economic activity governed by legal norms. Our research aims, on the one hand, to highlight the fact that sports activity is an area of public interest, and on the other hand that it is necessary to research the accounting and tax implications in sport in order to reduce the impact of money laundering through this activity and to create a reasonable assurance to all the beneficiaries in this branch whatever they are (athletes, clubs, investors, fans).

Keywords:

Sports fraud, taxation, sports management

1. Theoretical background on the research theme

Attempts to a Europeanization of sports law have emerged even after the Bosman jurisprudence, and some of them are: The Amsterdam Sports Declaration (1997) was proclaimed as an unappealing annex to the Treaty of Amsterdam, pointing out "the social importance of sport" . They

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are urged by the European authorities "to listen to sports associations when it comes to important questions affecting sport". In 1998, the Commission published the paper *"Development and Prospects for the Community Sport Activity"* as well as a consultative document *"The European Model of Sport"*. He followed the Helsinki Report on Sport (1999), which tried to reconcile the maintenance of sporting rules under the conditions of changing the legal framework. After the Nice Council meeting, the *"Nice Declaration on Sport"* (2000), where the Council of Europe recognized *"the role of sports organizations in organizing and promoting their sports, in particular as regards rules applicable to national teams in the way they think they best reflect their goals."* And the last such intervention of the Union took place in 2007 when the White Paper on Sport was developed under the coordination of the European Commission. This charter emphasizes the social, cultural and economic role of sport, but at the same time recognizes a specificity of this activity, especially in the competitive organization.

Marshall Glickman, former president of the NBA franchise Portland Trail Blazers and a well-known consultant in the European and North American sports economic market (G2 Strategics CEO), comparing the European and the American sports, made an interesting remark: *"During the last four decades the North American sport has moved from pure competition to a real deal, a game of entertainment. Although the quality of competitions has remained central, North American sports culture is associated with its monetization. In most European countries, sports culture was associated with competitions. Nor is the consumer behavior of the two continents comparable. In this way, not an economic difficulty would lead most European sports organizations to become more professional and more oriented towards the idea of business and financial performance, but rather the idea of collective mentality and perception on a macro-social level."*

2. Methodology of research

The scientific research methodology underlying this article is based on fundamental research, attempting to review the main approaches, ideas and opinions of specialists from the specialized literature, while aiming at providing a perspective on the issues addressed. The methods and techniques used in the article consist of analyzing legislation at different levels: international, European and national, comparing the tax implications of income and player transfers according to how it is captured in the balance sheet and establishing the most effective solution for both sportsman and sports club. The study aims to research the accounting and tax implications

in sport with an impact on reducing the money laundering phenomenon through this activity.

The transfer of a sportsman, the conclusion of a contract with an athlete, the income earned by him, the loan of athletes, the benefits in national teams, the situation of the player agent, the various sanctions applied by national and international sports federations or by national and international courts, however, with a continuing development of the global sports market clearly reveals the interference of sport with the business environment and the need for rigorous accounting.

3. Tax implications of the play transfer

So far, there are two views on the status a player must have at the time of transfer: one in which he is seen as a service provider who has entered into a contract with a sports club and the second is where the player is an incomplete fixed asset amortized at the time of the transfer. For the first hypothesis, we believe that this sum representing the contractual clause should be paid by the player as between him and the original club the individual employment contract was concluded, but in reality the new club is the one who will pay the indemnity.

From our point of view, in order to be able to argue in one sense or the other, it is necessary first to analyze the reason why we might consider the transfer of an athlete by a sports club to another sports club as a provision of services. Athlete transfer is an operation performed by sports entities, most of which sports clubs. They are private legal entities organized either as profit-making entities or as non-profit entities. Often in practice, although the sports club appears to be organized as a non-profit entity, in the form of an association, a careful analysis of the balance sheet shows the existence of the lucrative goal. The lucrative goal should not be considered only from the point of view of the legal person, but an objective analysis should be made in this respect. Currently, national federations allow sports clubs to be organized as joint-stock companies. For example, the Romanian Football Federation admits the possibility of organizing football clubs in the form of joint stock companies, which means that they are subject to the common law on companies, Law no. 31/1990 on companies, and football clubs can be considered as profit-making entities. This profit can be obtained by selling tickets to sports events, assigning TV rights, sponsoring, and transferring athletes to other national or international sports clubs. But can we consider these sports clubs as taxable persons within the meaning of Directive 2006/112 / EC and the Fiscal Code? *The question which is relevant in*

our view is whether the transfer of athletes could be regarded as an economic activity within the meaning of Directive 2006/112 / EC so that they could be subject to value added tax?

Practically, through this recalculation of the transfer amounts, football players were considered from the accounting and tax point of view as intangible assets as sources of profit, mainly due to the clubs' distribution of profit and clubs that contributed to the formation of the athlete until the age 23 years old. Another justification was that of acquiring or selling contractual rights, and France should take account of the new accounting IFRS realities as the asset item recorded in the balance sheet is individually defined, having its own, company-controlled economic value and susceptible to being disconnected from the club's activity in a sale, transfer or exchange. So, since 2004, in the view of the French tax legislator, the transfer of a football player is a service provision. In the same sense, the United Kingdom has also stated that it is subject to a 17.5% VAT on transfers if an athlete is transferred to the country or to an English team. Conversely, the most vehement states opposed to the transfer amount being the payment of a service are the Netherlands and Belgium. Nor, Norway, a country which, although not part of the European Union, does not apply value added tax to transfers of athletes within the country.

Regarding the issue of transfer allowance and this is susceptible to certain delimitations as we can not deny that there is no termination of an individual employment contract before the termination of the contractual period. The purpose for which a sports club enters into a contract for a minimum of 2 or 3 years if the player is of a certain age is, precisely, from the point of view of the balance sheet, the amortization of the amounts invested by the sports club in bringing into his lot the athlete concerned. From the point of view of the account, the transfer contract is classified as fixed assets because of the stability offered by the individual work contract concluded with the athlete. There is also the view that we should actually include in the category of circulating assets precisely because of the existence of this employment contract and the fact that athletes can unilaterally or contractually cancel the contract [1]. We believe that a fixed or circulating asset must be judged by reference to the athlete's situation: with that fixed-term employment contract, it is expected that he will remain with that team for at least that contractual period that allows the club to depreciate the investments made with the purchase and the ones he will make during his contractual period. It should not be denied that in the event of a termination of the contract, the club will no longer see its expenses amortized and that it should be paid that compensation that appears as a clause in the player's contract. Of course, this allowance should be paid by the player, but most

often the new club will do it. This is why confusion arises as to the legal nature of the indemnity: contract clause, transfer price, player's release price?

We believe that if the contract between the club and the sportsman provides a sum of money that the athlete would have to pay if he unilaterally denounces the contract, but it is not paid by him, but by the new club on behalf of the athlete, this is the clause which once executed by the third party allows the player to leave his old club. But if the transfer amount provides for something extra over the amount of the contract clause then that amount is the price paid by the receiving club for the athlete's purchase. We assume that in the case of this sum we could speak of a possible added value because basically the old club has amortized all its expenses, it has restored its budget, at least at the theoretical level. But because he asked for something extra, we find that he actually requires a remuneration for the value he added to the athlete through sporting and competitive training.

In order to understand this, we consider that a practical example can also be used: we have two X clubs, the ceding club and Y, the beneficiary club and the sportsman S.

Figure 1. Example of a transfer activity
source: own processing

It was bought by club X from another club T in the second football league in Romania for the sum of 100,000 euros. During the individual labor contract with X (5-year contract), in year 3, club Y starts negotiations on S's transfer to his team (Y's). Club X agrees, so is the sportsman S. Club Y is a club in the First League in Spain and after negotiations, the parties agree that the transfer amount is 2 million euros. We notice that the difference between the purchase price and the sale price is 1,900,000 euros. So if in the contract between X and S there would be a clause by which if S leave he would have to pay a sum of 500,000 euros by the respective transfer amount of the 2 million, the criminal clause is covered and remains a difference of 1.5 million euros, which in fact represents the value that club X added to the athlete S during the contract period with him. And so we are now in the presence of a service, but the VAT-carrying amount is 1.5 million, not all 2 million. We consider that from this perspective it should be approached the possibility that the amount paid in the case of a transfer of athletes should be VAT and be considered a payment for a service. Besides, in any case we approach the transfer problem, we consider that there is a payment that is directly related to the legal object of the transaction, namely the transfer of the athlete to the ceding club.

In the example I have presented, it is noticed that club X is being robbed of VAT for the 1.5 million euros, representing, from our point of view, a benefit obtained by the club. The general conclusion regarding the transfer of players is that a sportsman can not be considered a good or a service according to human rights and clubs are entitled to levy contractual clauses to recover their investments but the huge amounts of transfers are nothing more than a value which must be subjected to taxation.

When it comes to tax frauds, a player's transfer action can also be viewed from the point of view of the player agent. This brokerage or affiliate process has a high risk when it comes to international transfers. The European and international legislators have regulated this issue, but the complexity of the process and the ambiguity of the terms only create situations of over-taxation in some cases or the juggling of taxation in the case of players' agents aware of legislative subterfuges.

For example, if a Romanian sportsman signs a contract with a Romanian agent (see figure 2) and afterwards the sportsman will sign a contract with a team in Spain, the intermediary is primarily the sportsman and the main contract operation, the service provision by finding the club and creating a negotiation framework between the club and the sportsman, is in Romania if the agent carries out this mediation activity in Romania, but if the intermediation activity implies a higher presence in Spain then the place of rendering of the service will be Spain. If, on the other hand, the

sportsman gives a representative mandate and gives him the opportunity to negotiate and sign in his place then the main operation becomes the signing of the contract of employment and the place of supply of services will be located in Spain being a contract governed by Spanish law and concluded on the territory of Spain. If, instead, the beneficiary is a taxable person, in the present case if the sports club is a taxable person, the place of supply of the services would, according to Art. Article 44 of Directive 2006/112 / EC is the place where the taxable person is established [2].

Figure 2 Uncertainty of the state taxing the player's agent action
source: own processing

3. Fiscal evasion with the premise of encouraging the sporting activity

The Organization for Economic Cooperation and Development has attempted to elaborate in the model convention on avoiding double taxation on income and profit, a system whereby any income that an athlete could derive from his activity is subject to income tax in the source state where the income has been obtained or if this is not possible in the State of residence. Practically, at the time of drafting this provision, it was intended to avoid situations where athletes' incomes are not subject to income tax in any state, and so athletes would somehow try to circumvent the tax rules. Although a clear definition of the persons and activities to be subject to taxation in the source state was desired, the provisions of art. 17 leave room for broader interpretations allowing for the extension and other persons who may participate indirectly in sport activity but who can be subject to taxation in the source state (examples: athletic agents, impresaries, technical team members, team directors whose activity is carried out in relation to the activity of the athletes even if they do not participate directly in performing the respective sport). However, the Convention proves its limits, especially in the case of international sports competitions where, beyond the occurrence of a conflict between tax rules, there is also an influence of sports organizations on the exemption of athletes from paying taxes on their income.[3]

At international level, the United States of America created the precedent of taxing athletes participating in an international competition in 1994, when it hosted the World Football Championship. Federal tax authorities have entered into an agreement with FIFA to apply income tax on awards received by athletes for participating in this tournament. The US based its reasoning on the provisions of Art. 17 of the OECD Model Convention and the conventions with different states on the avoidance of double taxation. The US has also expressed its willingness to tax under the law of the source state and the income earned by athletes from other sources, as well as sponsorships received in connection with the activity carried out on its territory during the sporting event. Moreover, at the 1996 Olympic Games in Atlanta, the US again tried to apply the same fiscal measures that it had used for the 1994 World Football Championship. In the case of the Atlanta Olympic Games, the federal tax authorities, have struck the refusal of the American Congress to tax such athletes. However, it was the US attitude that marked the beginning of a real crusade to tax athletes internationally [4].

International football is one of the most popular sports and at the same time perhaps the sport that generates the highest income for those who practice it. Mobility of football players today is impressive at an international level, which is why this sport is increasingly in need of clear regulation, especially regarding sporting income and international sports transfers. The two sporting authorities on football are FIFA at international level and UEFA at European level. Of the two, FIFA understood that non-taxation of athletes' income would undoubtedly deprive the general principles of tax law and would even create major financial problems for organizing states. The costs of organizing a World or European football tournament are impressive and involve major investment from host countries, especially in adapting infrastructure to international requirements. Therefore, since 1994, FIFA has agreed to accept the possibility of taxing awards received by athletes in the source state.

Table 1. Cases of FIFA involvement in the tax regime of different states

Following negotiations between FIFA and the French tax authorities at the 1998 World Football Championship, it was concluded that 1/3 of the FIFA payments to the National Football Federations were considered as bonuses to be awarded to athletes. Thus, the awards were subject to a single 15% tax rate, resulting in a total tax of 5% of gross payments made to national federations. However, if a federation or an athlete does not comply with this scheme, a less favorable tax of 33.33% applies.
In 2006, Germany, the host country, only accepted the 23 players who formed the national team, the coaches and the directors of the national teams enrolled in the competitions. The rest of the people involved in sports activities remained subject to tax laws in their countries of residence. Although it was apparently a successful negotiation, we do not consider it to be so because any income that these people obtained directly or indirectly from participating in competitions was subject to taxation. Such incomes were considered to be FIFA or national federation prizes, prizes in cash or in kind, contributions from third parties, income from the

	<p>use of the image of the athlete in connection with the sporting event, incomes obtained from the appearance in unrelated advertisements with the sporting event, but which were broadcast during that event on the territory of Germany or in another country. These revenues were subject to a single rate of 21.1% withholding tax. A system of collaboration between the national federations - the FIFA - the German World Wide Country Organizing Committee and the German tax authorities - to which was sent the information on the income received by athletes in connection with this championship. These were the provisions applicable to States which had concluded Double Taxation Conventions with Germany and gave the source State the right to tax income earned by athletes.</p>
<p>In 2010, South Africa was the host country of the World Football Championship and almost certainly FIFA has been trying to get tax benefits now. Following several negotiations, the same income tax exemption for FIFA members and national federations was reached, only members of national teams and coaches were subjected to taxation.</p>

Source: own processing

If FIFA understood the need to apply the principle of withholding tax on income, not as cooperative was UEFA which tried to explain the lack of a true link between the payments it makes and the activity of each athlete individually. He also argued that there is no link between these payments and the host state of European competitions such as the European Football Championship or the Europa League and Champions League, since the payments made by UEFA are made directly and personally by it in Switzerland to the national teams' federations and not individual teams or players. Moreover, in UEFA's view, there is no direct link between the state where the competition takes place and the payments that the athletes receive from the national football federations. UEFA has used its reasoning and the fact that the amounts are not given to each individual player, but the team as a whole receives a certain amount depending on its performance.

From our point of view, UEFA's position is excessive and one can notice the way in which it is desired that the athletes should not be subject

to the rules of international tax law, which we find abusive in view of the provisions of art. 17 of the OECD Model Convention.

As for UEFA competitions, some examples are eloquent to note UEFA's active involvement not only in organizing events, but also in setting fiscal policies.

Table 2. Cases of UEFA involvement in the tax regime of different states

In 2004, Portugal, the host country of the European Football Championship, had to guarantee under the contract signed with UEFA that no national delegation, any member of any national team or any UEFA member would be subject to income tax in the host country. Otherwise, he would have withdrawn his right to organize the Championship, which determined the Portuguese Finance Minister of that time to propose a series of regulations and ordinances in view of adopting special tax measures specifically for this sporting event.
In 2000, the European Football Championship was held by Belgium and the Netherlands. The two states negotiated that the income tax applied to the earnings obtained by athletes would be in the form of a single rate of 18% for both states which would then be paid out according to how many matches were played in each of the two countries after which each participating team received the money from UEFA. However, the discrepancies between the two systems of taxation were all the more important, especially since it was extremely difficult to implement a unitary system, given that, for example, in the Dutch judicial system, members of national teams participating in competitions international staff are considered to be employees of national federations even if there is no contract of employment actually signed with them. Unlike the Belgian system where the football players called in the national teams were not considered employees of the federation. For this reason, from the perspective of Netherlands, the state of residence was the one who had to withhold the tax. We can see how the legal tradition of some states may appear as a

	barrier to the application of international tax rules. It was necessary for the Netherlands to enter into the organizing states of the event, although traditionally the Netherlands would not apply this rule precisely because of the interpretation it confers to the players of a national team. The change to this rule has only occurred exceptionally in view of the European Championship.
At the 2008 European Championship organized by Austria and Switzerland, UEFA's influence was overwhelming. Although it failed to persuade either of the two countries to apply a tax exemption, it could reach a common denominator so that the tax rate would be unique in both states of 20% of the value of any cash prize offered by participating teams' national federations. Tax coaches, federal officials and other federal delegates who did not practice sport effectively were exempt from source taxes. They were taxed in the state of residence.

Source: own processing

In the case of the Olympic Games, the involvement of the International Olympic Committee is fundamental, as has been noted in the situation that existed in 2000 and London in 2012. However, we can not fail to notice, as in the case of UEFA, in which states end up virtually ceding from fiscal sovereignty even for a relatively short period of time. In fact, there is a situation of discrepancy between athletes where an international sports body can influence tax policy and a sport that does not benefit from such a privilege. We believe that the tax regime for athletes should be rethought at an international level so there is no such difference between one sporting competition or another and especially to avoid situations of arbitrariness. Tax law is part of the structure of a state, and its rules contain provisions that should aim at better fund management. That is why we believe that international sports organizations should not intervene so imperative in the tax policies of a state.

4. Conclusions and proposals

As a conclusion to the above, we can see how the international athlete seems today to have a clearly defined and delimited fiscal status, but

in reality, through the intervention of the international organizations in the field of sport, a more detachment from the general principles regarding the taxation of athletes is being attempted. There may even be situations where, due to the existence of double taxation conventions, the State of residence only allows the source State to tax income and the source State, as a result of granting an exemption, excludes the athlete from applying the rules on income taxation . This is a typical example of a double non-taxation case. Derogations in favor of certain categories of athletes may lead to instances of inequality before the law, and athletes may even refuse to participate in certain competitions precisely because of the application of these differentiated tax treatments. We believe that a rethinking of the way in which income taxed by international athletes is to be taxed. Also, the intervention of international sports organizations in the tax policies that the organizing State decides to adopt must be minimal. Otherwise there is a risk that these organizations become even more influential than the states themselves in their own legislative process. The effect will be quite predictable: the transfer of fiscal sovereignty in this area to foreign entities that could seriously damage the economies of the organizing states through their decisions to apply exemptions to international sportsmen.

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