

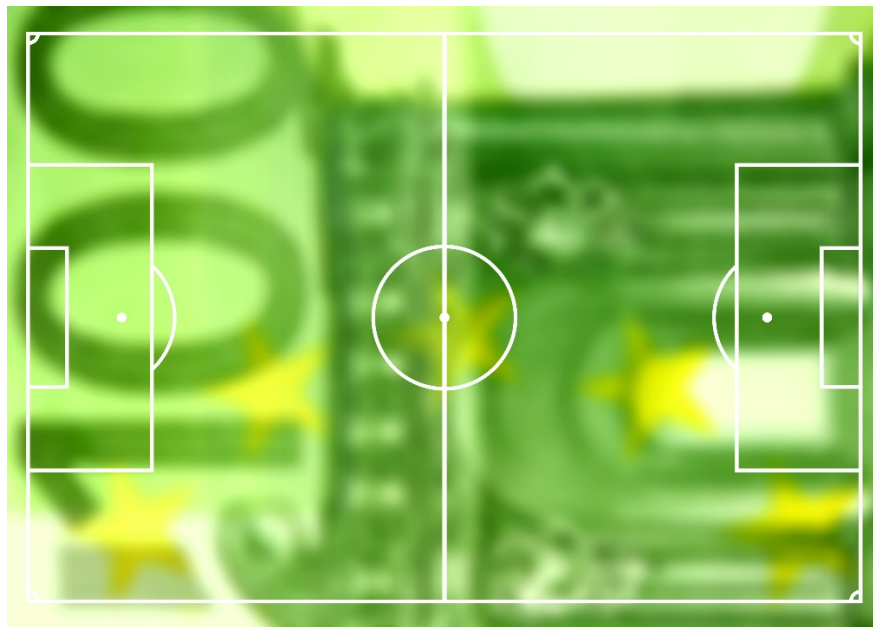
STUDY

Requested by the FISC Subcommittee



Taxing professional football in the EU

A comparative and EU analysis
of a sector with tax gaps



Policy Department for Economic, Scientific and Quality of Life Policies
Directorate-General for Internal Policies
Authors: Prof.dr. Robby HOUBEN, Prof.dr. Anne VAN DE VIJVER, Prof.dr. Niels
APPERMONT and Gertjan VERACHTERT
PE 695.451 - October 2021

EN

Taxing professional football in the EU

A comparative and EU analysis
of a sector with tax gaps

Abstract

This study scrutinises the tax treatment of professional football players' remuneration throughout the European Union. It does so on the basis of a comparative analysis of selected country schemes. It draws conclusions and formulates suggestions for a future European Union approach.

This document was provided by the Policy Department for Economic, Scientific and Quality of Life Policies at the request of the Economic and Monetary Affairs Subcommittee on tax matters (FISC).

This document was requested by the Economic and Monetary Affairs Subcommittee on tax matters (FISC) of the European Parliament.

AUTHORS

Prof.dr. Robby Houben, University of Antwerp, Faculty of Law, Belgium

Prof.dr. Anne Van de Vijver, University of Antwerp, Faculty of Law, Antwerp Tax Academy, Belgium

Prof.dr. Niels Appermont, University of Hasselt, Faculty of Law, Belgium

Gertjan Verachtert, University of Antwerp, Faculty of Law, Belgium

ADMINISTRATOR RESPONSIBLE

Dirk VERBEKEN

EDITORIAL ASSISTANT

Catherine NAAS

LINGUISTIC VERSIONS

Original: EN

ABOUT THE EDITOR

Policy departments provide in-house and external expertise to support European Parliament committees and other parliamentary bodies in shaping legislation and exercising democratic scrutiny over EU internal policies.

To contact the Policy Department or to subscribe for email alert updates, please write to:

Policy Department for Economic, Scientific and Quality of Life Policies

European Parliament

L-2929 - Luxembourg

Email: Poldep-Economy-Science@ep.europa.eu

Manuscript completed: September 2021

Date of publication: October 2021

© European Union, 2021

This document is available on the internet at:

<http://www.europarl.europa.eu/supporting-analyses>

DISCLAIMER AND COPYRIGHT

The opinions expressed in this document are the sole responsibility of the authors and do not necessarily represent the official position of the European Parliament.

Reproduction and translation for non-commercial purposes are authorised, provided the source is acknowledged and the European Parliament is given prior notice and sent a copy.

For citation purposes, the publication should be referenced as: R. Houben, A. Van de Vijver, N. Appermont and G. Verachtert, *Taxing professional football in the EU. A comparative and EU analysis of a sector with tax gaps*, Publication for the Economic and Monetary Affairs Subcommittee on tax matters (FISC), Policy Department for Economic, Scientific and Quality of Life Policies, European Parliament, Luxembourg, 2021.

© Cover image used under licence from Adobe Stock

CONTENTS

LIST OF ABBREVIATIONS	5
LIST OF FIGURES	7
LIST OF TABLES	7
EXECUTIVE SUMMARY	8
POLICY RECOMMENDATIONS	11
1. INTRODUCTION	13
1.1. The growing football economy	13
1.2. Key actors in the football economy	14
1.3. The internal market for football services in Europe	15
1.4. Unlevelled regulatory and supervisory playing field for clubs and agents: a case for uniform good governance standards throughout the EU	16
1.5. Case study: anti-money laundering legislation	18
1.6. Regulatory competition from a players' perspective: here comes tax	19
1.7. Various tax and social security treatments of professional football throughout the EU	20
1.8. Scope and methodology of this study: the tax treatment of professional players' remuneration in a selected number of Member States and suggestions for a European approach	21
2. THE TAX TREATMENT OF PROFESSIONAL FOOTBALL PLAYER'S REMUNERATION: CASE STUDIES	25
2.1. Belgium	25
2.1.1. Introduction	25
2.1.2. A tale from the past	25
2.1.3. The tax framework for football players	26
2.1.4. Recent events	28
2.2. The Netherlands	29
2.2.1. Introduction	29
2.2.2. The tax framework for football players	29
2.2.3. Recent events	32
2.3. France	33
2.3.1. Introduction	33
2.3.2. The tax framework for football players	33
2.3.3. Overview of average player salaries in the French Ligue 1	37
2.3.4. Recent developments	37
2.4. Italy	38

2.4.1. Introduction	38
2.4.2. The tax framework for football players	39
2.4.3. Overview of average player salaries in the Italian Serie A	44
2.4.4. Recent events	45
2.5. Portugal	46
2.5.1. Introduction	46
2.5.2. The tax framework for football players	46
2.5.3. Recent events	49
2.6. Spain	50
2.6.1. Introduction	50
2.6.2. The tax framework for football players	50
2.6.3. Overview of average player salaries in the Spanish La Liga	53
2.6.4. Recent events	53
2.7. Germany	54
2.7.1. Introduction	54
2.7.2. The tax framework for football players	55
2.7.3. Overview of average player salaries in the German Bundesliga	56
2.7.4. Recent events	56
2.8. Case studies: conclusions	57
3. CONSIDERATIONS WHEN REDESIGNING THE APPROACH AS REGARDS TAXATION OF PROFESSIONAL FOOTBALL: PITFALLS AND POLICY RECOMMENDATIONS	60
3.1. Preliminary remarks	60
3.2. EU Law, sports policy and direct taxation: caught between hammer and anvil?	61
3.3. Policy recommendations: towards a more levelled playing field?	65
REFERENCES	70

LIST OF ABBREVIATIONS

AO	The German General Tax Code
BEFIT	Business in Europe: Framework for Income Taxation
CCCTB	Common Consolidated Corporate Tax Base
CGI	The French <i>Code Général des impôts</i>
CIRS	The Portuguese <i>Código de Imposto sobre o Rendimentos das Pessoas Singulares</i>
CJEU	Court of Justice of the European Union
DFB	German Football Association
DNB	Dutch National Bank
EC	European Commission
ECOFIN	Council of Economics and Finance Ministers
EU	European Union
FATF	Financial Action Task Force
FFP	Financial fair play
FIFA	International Federation of Association Football
FTC	French Tax Code
GDP	Gross domestic product
GTA	The Dutch General Tax Act
IFI	The French <i>Impôt sur la fortune immobilière</i>
IRAP	The Italian <i>Imposta Regionale sulle Attività Produttive</i>
IRPEF	The Italian <i>Imposta sul reddito delle persone fisiche</i>
IRPF	The Spanish <i>Impuesto sobre la Renta de las Personas Físicas</i>
ITC	The Italian Income Tax Code
IVAFE	The Italian <i>Imposta sul valore della Attività Finanziarie detenute all'estero</i>

IVIE	The Italian <i>Imposta sul valore degli immobile situati all'estero</i>
KNVB	Koninklijke Nederlandse Voetbalbond
LIRPF	The Spanish <i>Ley del Impuesto sobre la Renta de las Personas Físicas</i>
MiCA	Markets in Crypto-Assets Regulation
NHR	Non-Habitual Resident
OECD	Organisation for Economic Co-operation and Development
R&D	Research and Development
RBFA	Royal Belgian Football Association
TFEU	Treaty on the Functioning of the European Union
TUIR	The Italian <i>Testo Unico delle Imposte sui Redditi</i>
UEFA	Union of European Football Associations
UAE	United Arab Emirates

LIST OF FIGURES

Figure 1: Revenues of the biggest five football leagues in Europe	14
Figure 2: Overview of average player salaries in the French Ligue 1	37
Figure 3: Overview of average player salaries in the Italian Serie A	44
Figure 4: Overview of average player salaries in the Spanish La Liga	53
Figure 5: Overview of average player salaries in the German Bundesliga	56

LIST OF TABLES

Table 1: Income tax rates Belgium	27
Table 2: Income tax rates the Netherlands	30
Table 3: Income tax rates France	34
Table 4: Income tax rates Italy	40
Table 5: Income tax rates Portugal (IRS table for the year 2021 (article 68(1) of the CIRS))	47
Table 6: Income tax rates Spain (table for the year 2021 (articles 63 and 74 of the LIRPF))	51
Table 6: Income tax rates Germany	55

EXECUTIVE SUMMARY

Background

Sport is a large and fast-growing sector of the economy that already accounts for more than 2% of Europe's total Gross domestic product (GDP) and almost 3% of employment in the European Union (EU). Within the sports economy, football, as the world's leading, most commercialised and mediated sport, takes the most prominent place and continues to grow.

In Europe, football's key actors are active on the EU internal market. The internal market and the Treaty freedoms require levelled regulatory and supervisory fields for professional football's actors. In practice, however, regulatory and supervisory playing fields in professional football are unlevelled. As regards professional football clubs and football agents, the rules to access the internal market and to provide their respective services within the internal market, as well as supervisory practices, can differ from Member State to Member State, arguably hindering access to the internal market dependent on the place of entry, and thereby hindering the establishment and functioning of a true internal market. To address this issue it is advocated that the legislator should level the regulatory and supervisory playing field and introduce uniform harmonised high-standard good governance rules for football agents and professional football clubs, through a EU license system (including anti-money laundering legislation), in addition to an adequate monitoring system and appropriate sanctions in case of non-compliance.

Also the tax and social security treatment of professional football players' remuneration contributes to unlevelled playing fields in Europe: throughout the EU there are various approaches towards the taxation and social security position of professional football. Nevertheless, a common thread, that becomes apparent throughout this study, is that all in scope countries are united in diversity, whilst pursuing a common aim: Member States take a different approach to players' taxation, but most realise the importance of an attractive tax regime for a continuously growing industry.

Aim

This study scrutinises the tax treatment of professional football players' remuneration in various Member States. The tax treatment of players' remuneration is analysed in a selected number of Member States that host top or sub top football competitions. In scope are: Belgium, France, Germany, Italy, the Netherlands, Portugal and Spain.

Comparing the tax treatment of players' remuneration in different countries is not self-evident as multiple factors can be relevant. In our comparison of the tax regimes for players in the in scope countries, the focus will mainly lie on the general tax framework and the *rationale* behind the framework in place. We will compare the tax treatment of players' remuneration in these countries with the normal tax practice of these countries for non-sportive taxpayers. If the normal tax practice is different from the tax regime for football players, we will identify the *rationale* behind the specific tax regime. In view of designing a potential common European approach, we will compare the relevant country specific findings.

Key Findings

Member States are united in diversity. This makes it rather difficult to compare the individual tax burden of a football player on a country-by-country basis, as this will depend on the salary level, type of remuneration received, the application (or not) of certain tax incentives and many other parameters. Therefore, the fiscal situation of professional football players has to be assessed on an individual basis,

taking into account their (previous) tax residency, height of their salary, composition of their remuneration package, the availability of other types of income, whether they receive foreign sourced income or not, etc.

At the same time, the research shows that players will, in the default situation, usually be subject to 'normal' levels of taxation, when compared to other, similarly paid professionals in that Member State. They do not specifically benefit from tax incentives in comparison with other taxpayers. In those Member States where football players do benefit from tax incentives, it should be mentioned that other taxpayers (often skilled expatriates or industries such as the R&D-sector or wider sports industry) also have access to tax stimuli. Ultimately, it seems that most (high earning) players, are always subject to the highest income tax rates. Countries do take a different approach in determining taxable base, for instance it seems that The Netherlands, France and (mainly) Italy offer greater possibilities to optimise taxable base in the benefit of the player. It seems like most Member States are trying to address tax excesses that result from abusive use of tax planning.

Notwithstanding Member States are united in diversity, they are pursuing a common aim, at least are conscious of the impact of tax on the competitiveness of their national football leagues. Thereby, one can also not lose track of tax competition with non-EU countries. EU soccer leagues are increasingly facing competition from low tax jurisdictions like the United Arab Emirates (UAE) or Qatar, or countries that specifically target football players like Turkey and (until recently) China.

Most of the Member States selected for research in this study, either have specific measures in place which are an incentive to football players' income taxation (or athlete income in general), had them in place in the past or consider the introduction of these measures. On the basis of our research, the following categories can be distinguished:

- Countries with tax incentives for (amongst others) football players' income: The Netherlands, France, Italy and Belgium.

The Netherlands, France and Italy do not have targeted incentives for the football industry, but all allow football players to enjoy the benefits of a rather beneficial expatriate tax regime. These regimes allow the football players (and indirectly the clubs) to enjoy a tax-exempt part of their salary and thus basically allow for an optimization of the taxable base of the players' income. The Netherlands and France allow for a 30% exemption, whereas Italy allows a 50% exemption. The application of these regimes is subject to restrictions, mainly in the Netherlands.

Belgium also has an expatriate tax regime but does not allow application of this regime by football players. This Member State does offer a tax incentive in relation to wage withholding tax for sports clubs, where 80% of the wage withholding tax does not need to be paid to the tax administration but can be spent by the clubs (mostly subject to the condition that the incentive is spent on the education of youth players).

- Countries who had certain tax incentives in place: Spain.

Spain introduced an expatriate regime in 2004, which is often referred to as the Beckham-law. This regime allowed for the qualification as tax non-resident for football players migrating to Spain and the use of preferential tax rates. As of 2015, the regime can no longer be applied by football players.

- Countries with specific tax regimes, albeit not applicable to football players: Portugal.

Portugal introduced the non-habitual tax resident regime in 2009. This regime amongst others allows skilful workers to benefit from a preferential 20% tax rate on employment income. Albeit regretted in legal doctrine, this highly beneficial tax regime is not open for football players.

- Countries with no specific tax regimes: Germany.

Germany does not have any specific income tax regime in place from which professional football players could benefit.

From an EU perspective, developing policy actions regarding the taxation of professional football players' remuneration is not self-evident, because of various reasons, e.g. the issues underlying the matter are transversal and tie into different areas and aspects of (personal) income taxation, and foremost: the legislative manoeuvring space for the EU in matters of direct taxation is subject to several important limitations, the most important of which is no doubt the unanimity requirement in the Council in matters relating to direct taxation and the fact that the European Parliament is not a 'co-legislator' for such matters. This issue is further exacerbated by the fact that issues relating to personal income taxation, such as the taxation of players' remuneration, are seemingly not prevalent on the agenda of the European Commission and the Council.

Therefore, EU initiatives, currently, are limited to actions that support Member States' approaches. As not a great deal of research has been – or is being – conducted in this field, these actions should first focus on knowledge building, increasing transparency and the development of best practices. This could help Member States in improving, to the extent necessary, their own domestic systems with a view to fair taxation of professional football throughout the Union, with due consideration of the specificities of professional football, warranting a supportive tax treatment.

As the topic of research is underdeveloped from a scholarly perspective, we recommend to place the topic on the agenda and to raise awareness, both as a matter of research and as a matter of generating policy attention. We furthermore believe that the policy approach which has been taken in the case of the Code of Conduct for Business Taxation would also lend itself well to address the challenges posed by the tax treatment of professional football players and, more in general, the challenges posed by personal income taxation in the EU. Active involvement of the Union of European Football Associations (UEFA), its member associations of EU Member States and other football internal stakeholders in a Code of Conduct-like mechanism would be a strong signal towards policy makers that the football pyramid itself is engaged towards a fair and benchmarked taxation of professional football, for the greater good of all stakeholders, belonging to the football pyramid and civil society alike.

In addition to the foregoing, the active involvement and cooperation of the professional football sector can also be pursued through dedicating additional attention to matters of compliance and taxation in the cooperation agreement concluded between the European Commission and the UEFA, concluded in February 2018.

POLICY RECOMMENDATIONS

- It is advocated that the EU legislator should introduce uniform harmonised high-standard good governance rules for football agents and professional football clubs through a EU license system, in addition to an adequate monitoring system and appropriate sanctions in case of non-compliance. This suggestion deserves further attention at EU policy making level.
- The issue of money laundering in professional football can only be addressed effectively through European legislation. Ideally, this is done via the introduction of a EU license system, of which anti-money laundering legislation forms part. The alternative is to include professional football in the EU anti-money laundering legislation as a separate initiative.
- The national regimes in scope of this study all recognise, at least are mindful, of the importance of an attractive tax regime for professional football as a continuously growing industry. Most of the Member States selected for research in this study, either have specific measures in place which are an incentive to football players' income taxation (or athlete income in general), had them in place in the past or consider the introduction of these measures. Benchmarking the domestic regimes towards a fair, minimum level of taxation throughout the EU, based on the average tax pressure for professional football in the EU, is valuable in view of creating levelled regulatory playing fields.
- When a Member State would redesign its tax treatment for professional football from this perspective, it should, however, be mindful of the fact that a too drastic tightening up of the tax (and social security) treatment of professional sports, as the case may be, could have a disproportionate negative effect on professional football and professional's football corporate social responsibility initiatives, vis-à-vis other Member States. Taxation should be set at a fair level, whilst preserving competitive balance and assuring continuation of corporate social responsibility initiatives.
- Despite the economic and societal importance of the professional football sector, remarkably little attention has been dedicated to the fiscal (and related regulatory) framework surrounding professional football. This topic should be placed on the agenda and awareness should be raised, both as a matter of research and as a matter of generating policy attention.
- The policy approach which has been taken in the case of the Code of Conduct for Business Taxation would also lend itself well to address the challenges posed by the tax treatment of professional football players and, more in general, the challenges posed by personal income taxation in the EU, for example by setting up a 'Code of Conduct-like mechanism' for personal income taxation that also pays particular attention to the case of taxation of professional football players. Active involvement of the UEFA, its member associations of EU Member States and other football internal stakeholders in a Code of Conduct-like mechanism would be a strong signal towards policy makers that the football pyramid itself is engaged towards a fair and benchmarked taxation of professional football.
- The active involvement of the professional football sector can also be pursued through dedicating additional attention to matters of compliance and taxation in the cooperation agreement concluded between the European Commission and the UEFA.

- The income tax treatment of the football clubs themselves merits follow-up research, as well as the related question of the choice of legal entity type and its impact upon the applicable taxation regime, questions surrounding the use of fan tokens and their role of remuneration packages of players, developments in the use of image rights regimes, the social security treatment of professional football players.

1. INTRODUCTION

1.1. The growing football economy

Sport is a large and fast-growing sector of the economy that already accounts for more than 2% of Europe's total GDP and almost 3% of employment in the EU¹. Within the sports economy, football, as the world's leading, most commercialised and mediatised sport, takes the most prominent place. In season 2018/19, the European football sector's market revenue amounted to EUR 28.9 billion². Moreover, football is the most popular sport watched worldwide³. Furthermore, football accounted for 40.6% of global sports media rights in 2018⁴. Since then, notwithstanding the COVID 19 crisis, these numbers will not have decreased. On the contrary, the football economy has not yet reached its zenith. The increasing demand for live sport events⁵, the increasing globalization of football⁶, technological progress⁷, the interest of global tech companies in sports media rights⁸, an evolving media landscape⁹, continuing growth in media rights revenue for the professional football sector and a further influx of capital from various stakeholders¹⁰, including private equity investors¹¹, are but some of the factors that will likely stimulate further growth of the football economy. The foregoing can be illustrated by taking a look at the revenues of the biggest five football leagues in Europe (see Figure 1: Revenues of the biggest five football leagues in Europe next page), which have been steadily rising over the years.

¹ EC, *Sport in the European Union*, https://ec.europa.eu/assets/eac/sport/library/documents/eu-sport-factsheet_en.pdf (accessed on 26 January 2021); EUROPEAN PLATFORM FOR SPORT INNOVATION, *Position paper on the impact of the COVID-19 crisis on the sport sector*, https://euoffice.eurolympic.org/files/position_paper_COVID-19%20final_revision.pdf, 1 (accessed on 26 January 2021).

² DELOITTE, *Annual Review of Football Finance*, June 2020, <https://www2.deloitte.com/uk/en/pages/sports-business-group/articles/annual-review-of-football-finance.html>, 8.

³ NIELSEN SPORTS, *World Football Report 2018*; GLOBALWEBINDEX, *Sports Around the World*, 2018, <https://iccopr.com/wp-content/uploads/2019/03/Sports-Around-the-World-report.pdf>, 12.

⁴ SPORTBUSINESS CONSULTING, *Global Media Report 2018*.

⁵ *Ibidem*.

⁶ NIELSEN SPORTS, *World Football Report 2018*; GLOBALWEBINDEX, *Sports Around the World*, 2018, <https://iccopr.com/wp-content/uploads/2019/03/Sports-Around-the-World-report.pdf>, 12.

⁷ S. MORROW, "History, Longevity, and Change – Football in England and Scotland" in H. GAMMELSAETER and B. SENAUX (eds.), *The Organisation and Governance of Top Football Across Europe*, Routledge, 2011, 52-56; M. MILNE, *The Transformation of Television Sport – New Methods, New Rules*, Hampshire, Palgrave Macmillan, 2016, 220 p.

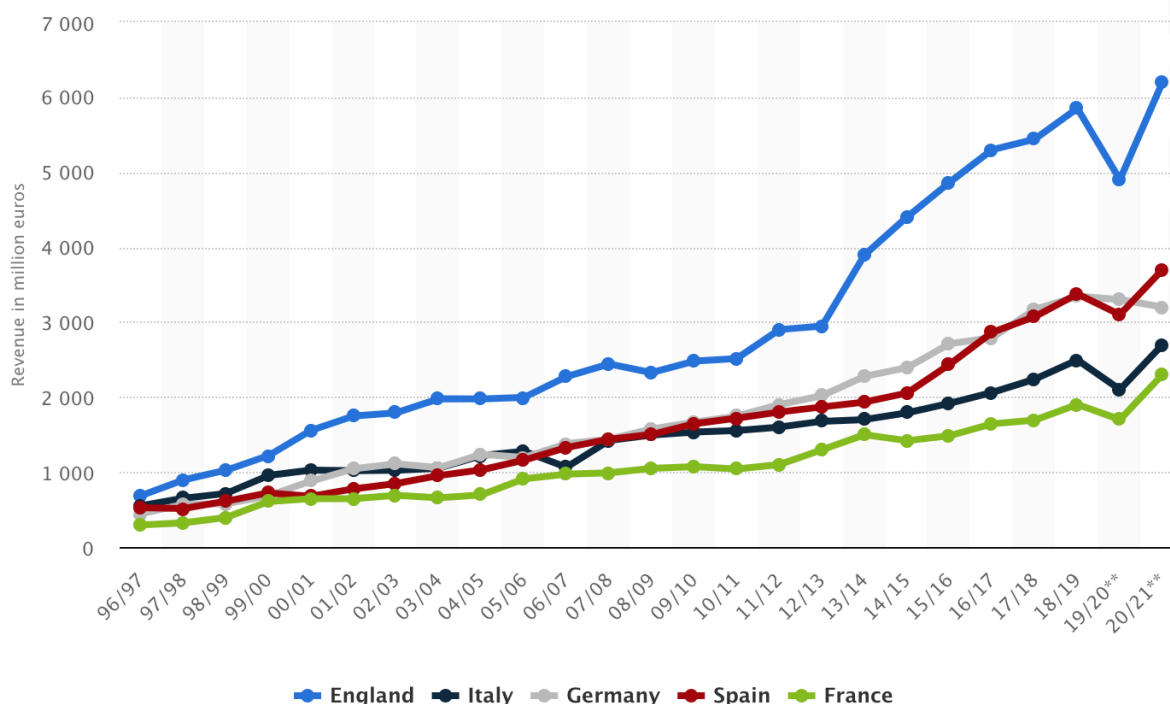
⁸ PAY TV INNOVATION FORUM, *The Global Market for Premium Sports OTT Services – Special Report*, July 2019, <http://files.clickdimensions.com/nagracom-adqlw/files/sportsottreport.pdf>.

⁹ *Ibidem*.

¹⁰ H. GAMMELSAETER and B. SENAUX, "Perspectives on the Governance of Football Across Europe" in H. GAMMELSAETER and B. SENAUX (eds.), *The Organisation and Governance of Top Football Across Europe*, Routledge, 2011, 2.

¹¹ B. MATHEW, "Private capital's rush into the business of sport", *Financial Times* 28 December 2020, <https://www.ft.com/content/9ba35ff2-ac31-41d2-8ff9-6107a64d0ae5>; See also the presentation of AJ SWOBODA at the 14 October 2020 Congress of the Club Brugge Chair (available via <https://www.uantwerpen.be/en/chairs/club-brugge-chair/conferences/>).

Figure 1: Revenues of the biggest five football leagues in Europe



Source: See <https://www.statista.com/statistics/261218/big-five-european-soccer-leagues-revenue/>.

1.2. Key actors in the football economy

Within the football economy, key service providers are professional football clubs, professional football players and football agents.

Professional football clubs, as engine of professional football, provide sportive and entertainment services to clients (fans) via football matches live in stadium and broadcasted via media against a fee¹². Football clubs are traditionally anchored into their region of incorporation¹³, with strong local and regional roots closely linked to the club’s core values¹⁴.

Players are also crucial in the football economy. Players are employed by football clubs, in exchange for salary, predominantly to play the game of football. The quality of the players stands in correlation with the performance of the club: the better the players, the better the club, both on and off the pitch. On the business front, the better a club performs, the more revenue it will generate¹⁵, such as media rights revenue, entrance bonus and prize money for participation in UEFA club competitions, sponsorship deals and match day revenue. Player transfers are often also a contributing factor to a

¹² See R. HOUBEN and S. NUYTS, *A new deal for professional football in the EU*, Cambridge, Intersentia, 2021, 33.

¹³ As opposed to the North-American sports franchise system, wherein it is more customary that professional sports franchises move from one region to another, European sports clubs and football clubs are traditionally anchored into their region of incorporation (M. MILNE, *The Transformation of Television Sport – New Methods, New Rules*, Hampshire, Palgrave Macmillan, 2016, 16; J. A. R. NAFZIGER, "A comparison of the European and North American models of sports organisation", *Int. Sports Law J.* 2008, 104).

¹⁴ D. RUSSELL, "The historical signification of locality and regional identity to football" in J. HUGHSON *et al.* (eds.), *Routledge Handbook of Football Studies*, New York, Routledge, 2017, 18-28; See the extreme example of Athletic Bilbao: its philosophy is to only field players who have come through its own academy or the academies of other clubs in the Basque Country (J. C. CASTILLO, "Play Fresh, Play Local: The Case of Athletic de Bilbao", *Sport in Society* 2007, 682-683).

¹⁵ MCKINSEY & COMPANY, *The Value Pitch*, 3 September 2020, <https://www.mckinsey.com/industries/consumer-packaged-goods/our-insights/the-value-pitch-the-importance-of-team-value-management>, 13).

club's business performance. A significant number of clubs, so called 'educational clubs', generate substantial revenue through player transfers. Basically, the *rationale* is to educate own youth players and/or invest in early career players, subsequently to improve their quality and performance, and lastly to realize the added value via a transfer to another club, usually in a higher segment of the market¹⁶.

In today's football economy, a common¹⁷ link between football players and football clubs are football agents. Football agents provide intermediary services to clients, both clubs and players, especially with respect to player transfers, for a fee.

Professional football is regulated and supervised by football's governing bodies. These operate largely autonomous within a hierarchical pyramid structure¹⁸. At the top of the pyramid stands the International Federation of Association Football (FIFA), the international governing body of football at a global level. UEFA is the governing body of football for the European continent. At the domestic level, national football federations organize and regulate football. Although theoretically clubs and football players could choose to leave the football pyramid and organize a competition of their own, practice shows that this is extremely difficult, as is shown e.g. by the recent Super League breakaway league attempt by a number of top flight Italian, Spanish and UK clubs. Soon after its launch, this attempt failed, receiving serious headwind from within the football pyramid, but also from politicians and fans alike.

1.3. The internal market for football services in Europe

In Europe, football's key actors are active on the EU internal market. Football agents e.g., offer their services across the Union (and beyond) and have European and/or global client portfolios. Professional football clubs and players are active on the internal market given their ability to play in European competitions¹⁹. In addition, their fan base stretches across Europe and even the globe²⁰. Specifically as regards clubs, the increasing cross-border acquisitions of multiple professional football clubs by e.g. sports holding companies, leading to multinational ownership and directorship²¹, and the recruitment of players and staff from across Europe and even the globe, further adds to the cross-border nature of their activities.

Within the internal market, football's key actors enjoy the Treaty freedoms. For professional football clubs and football agents, the freedom to provide services is most relevant. For players, the free movement of workers' principles are key.

¹⁶ To generate revenue for the selling club, the transfer has to take place within the player's contract period. Following the famous Bosman case (CJEU 15 December 1995, C-415/93, *Union Royale Belge des Sociétés de Football Association vs. Bosman*, ECLI:EU:C:1995:463. On this, see e.g., R. PARRISH, "Europe: The Transformation of football" in A. NIEMANN, B. GARCIA and W. GRANT (eds.), *The transformation of European football – Towards the Europeanisation of the national game*, Manchester, Manchester University Press, 2011, 23-24) after expiry of his contract a player can transfer without any transfer sum being payable.

¹⁷ Yet, intermediation by a football agent is not a necessity: see e.g., Kevin De Bruyne's recent contract renewal at Manchester City, which he negotiated without the intervention of a football agent.

¹⁸ J. KITCHING and P. FIDA, "International Federations" in N. DE MARCO QC (ed.), *Football and the Law*, Haywards Heath, Bloomsbury Professional, 2018, 25. Although over the years this pyramid structure has become a more horizontal network of football stakeholders, the traditional components of the pyramid are still very much in the driver seat.

¹⁹ Champions League, Europa League, Conference League.

²⁰ In particular the top 5 domestic football competitions in Europe are watched by fans throughout Europe and beyond: GLOBALWEBINDEX, *Sports Around the World*, <https://icopr.com/wp-content/uploads/2019/03/Sports-Around-the-World-report.pdf>, 2018, 12.

²¹ See <https://footballbenchmark.com/library/multi-club-ownerships-is-it-the-future-of-football>.

1.4. Unlevelled regulatory and supervisory playing field for clubs and agents: a case for uniform good governance standards throughout the EU

The internal market and the Treaty freedoms require levelled regulatory and supervisory fields for professional football's actors. In practice, however, regulatory and supervisory playing fields in professional football are unlevelled.

As regards professional football clubs and football agents, the rules to access the internal market and to provide their respective services within the internal market, as well as supervisory practices, can differ from Member State to Member State. Arguably, these different approaches hinder access to the internal market dependent on the place of entry, thereby hindering the establishment and functioning of a true internal market. To give more impetus to those actors that are leading and paving the way towards better governance in professional football, it is advocated that the legislator should come to their aid to level the regulatory and supervisory playing field to acceptable levels, so that actors that are currently underperforming are brought to higher levels of governance and compliance²². The idea is that, for the benefit of society and of the sector of professional football as a whole, it is important that all professional football clubs and football agents meet high governance standards. More specifically, uniform harmonised high-standard good governance rules for football agents and professional football clubs are suggested, in addition to an adequate monitoring system and appropriate sanctions in case of non-compliance.

From a policy perspective, such approach would boil down to a mentality shift. Indeed, now, policy making regarding professional football is often inspired by 'negative action', as a repressive response to root out abuses and irregularities by some. Of course, it is important to monitor compliance and sanction actors who infringe laws. Yet there is more to it than repression alone. Policy action should also be focused on prevention of abuses and irregularities through creating a legally certain environment with high standards of governance and compliance, and, of course, an adequate sanctioning apparatus. Yet, such a sanctioning apparatus should only be the tailpiece of policymaking, which should fundamentally be oriented towards prevention. In other words: when it burns it is important to be able to put out the fire, but it is a lot better when extinguishing capabilities are accompanied and preceded by sound fire prevention schemes.

It is argued that this requires EU legislative intervention: the cross-border nature of professional football's key actors means that a true internal market cannot be achieved by actions taken by Member States alone²³. Therefore, the EU should step in and harmonise Member States' laws to level the regulatory and supervisory playing field, the plea continues²⁴. Currently, the EU legislator is too absent in the business of professional football²⁵. Preferably, legislative action is taken in close cooperation with

²² See more elaborate R. HOUBEN and S. NUYS, *A new deal for professional football in the EU*, Cambridge, Intersentia, 2021, 52 p.

²³ *Ibidem*.

²⁴ In this respect it is useful to reiterate that the mere finding of disparities between national rules is not sufficient to justify EU harmonisation. It is different, however, where there are differences between the laws, regulations or administrative provisions of Member States which obstruct the fundamental freedoms and thus have a direct effect on the functioning of the internal market. Also, future obstructions to trade warrant EU intervention, insofar as the emergence of such obstructions is likely and the EU measure in question is designed to prevent them (see CJEU 4 May 2016, C-358/14, *ECLI:EU:C:2016:323*, par. 32-33). The articles of the Treaty relating to the free movement of goods, persons, services and capital are considered so fundamental that any restriction, even minor, of that freedom is prohibited (see CJEU 1 April 2008, C-212/06, *ECLI:EU:C:2008:178*, par. 52; CJEU 21 June 2016, C-15/15, par. 37), unless the restrictions are too uncertain and indirect for the restriction to be regarded as being capable of hindering that freedom (CJEU 8 May 2014, C-483/12, *ECLI:EU:C:2014:304*, par. 25). As regards professional football clubs and football agents, (future) domestic measures clearly (are likely to) create differences sufficiently certain and direct to obstruct the freedom to provide services within the internal market.

²⁵ See also GEERAERT, who argues that "given the large scope of rules issued by FIFA and UEFA that potentially infringes EU (competition) law, one would expect to see a larger body of Commission regulatory practice in football": A. GEERAERT, *The EU in international sports governance – a principal agent perspective on EU control of FIFA and UEFA*, London, Palgrave Macmillan, 2016, 107. With regard to football agents,

UEFA. Yet, the EU is not dependent upon UEFA to take action. It can do so by itself. The autonomy of sports, as recognised by Article 6 and 165 Treaty on the Functioning of the European Union (TFEU), does not stand in the way of this, because the suggested EU intervention would relate to professional football's key service providers' fundamental freedom to provide economic services within the internal market without undue barriers. Therefore, the EU's legislative intervention can be based on Article 59 TFEU and Article 53 *juncto* Article 62 TFEU, relating to the free movement of services within the EU. In subordinated order, as *lex generalis* for the internal market, Article 114 TFEU can function as legal basis²⁶. All three TFEU connecting factors result in EU legislation adopted in accordance with the ordinary legislative procedure²⁷.

Relevant in this respect is also that, from the outset, the European Commission (EC) emphasised that sporting organizations have to operate within the boundaries of EU law²⁸. In that vein, the Court of Justice of the European Union (CJEU) gradually downsized sporting organizations' aspirations for complete autonomy. The rulings in among others the Bosman case and the Meca-Medina and Majcen case eroded the perception that the so-called 'sporting exception' sheltered many regulations from examination by the European institutions²⁹. The EC also emphasised from the outset that the autonomy of sporting organisations is subject to compliance with good governance principles³⁰. Hence,

various policy reports and resolutions already suggested a legislative intervention by the EU: J. ARNAUT, *Independent European Sport Review*, 1 October 2006, 131 ('A European players' agents directive to be implemented foreseeing the tools for appropriate sporting regulations on players' agents at European level including for instance the following topics: strict examination criteria, transparency in the transactions, minimum harmonized standards for agents contracts, efficient monitoring and disciplinary system by European sports governing bodies, the introduction of an "agents licensing system", no "dual representation", payment of the agent by the player'); European Parliament Resolution on the Future of Professional Football in Europe, 29 March 2007, par. 44 ('in this respect calls on the Commission to support UEFA's efforts to regulate players' agents, if necessary by presenting a proposal for a directive concerning players' agents which would include: strict standards and examination criteria before anyone could operate as a football players' agent; transparency in agents' transactions; minimum harmonized standards for agents' contracts; an efficient monitoring and disciplinary system by the European governing bodies; the introduction of an "agents' licensing system" and agents' register; and ending "dual representation" and payment of agents by the player'); European Parliament Resolution on the White Paper on Sport, 8 May 2008, par. 100 ('in this respect calls on the Commission to support the efforts of sports governing bodies to regulate players' agents, if necessary by presenting a proposal for a directive concerning players' agents; supports public-private partnerships representative of sports interests and anti-corruption authorities, which will assist in the development of effective preventive and repressive strategies to counter such corruption'); EC, Report on the assessment of the risk of money laundering and terrorist financing affecting the internal market and relating to cross-border activities, 24 July 2019, 240 ('establish legal limitations on doing business as a player's agent, requiring agents to be registered, with a detailed résumé, in a regulatory agency in addition to FIFA'). Furthermore, 42.5% of the stakeholders in a recent survey strongly agreed that the EU should regulate intermediaries through EU legislation (as opposed to 30% who disagreed): R. PARRISH, A. CATTANEO, J. LINDHOLM, J. MITTAG, C. PEREZ-GONZALEZ and V. SMOKVINA, *Promoting and Supporting Good Governance in the European Football Agents Industry*, European Commission report, October 2019, 63-64. So far, these appeals are without result.

²⁶ On these legal foundations for EU intervention in professional football, see R. HOUBEN and S. NUJTS, *A new deal for professional football in the EU*, Cambridge, Intersentia, 2021, 30 et seq.; see also on the possibility for the EU to intervene as to professional football on the basis of Article 114 TFEU, notwithstanding Articles 6 and 165 TFEU: R. PARRISH, B. GARCIA, S. MIETTINEN and R. SIEKMANN, *The Lisbon Treaty and EU sports policy*, European Parliament Study, 2010, 7 (referring to harmonising measures more in general); R. PARRISH, A. CATTANEO, J. LINDHOLM, J. MITTAG, C. PEREZ-GONZALEZ and V. SMOKVINA, *Promoting and Supporting Good Governance in the European Football Agents Industry*, European Commission report, October 2019; R. PARRISH, "Sources and origins of EU sports policy" in J. ANDERSON, R. PARRISH and B. GARCÍA (eds.), *EU Sports law and Policy*, Cheltenham, Edward Elgar Publishing, 2018, 27-28; A. GEERAERT, *The EU in international sports governance – a principal agent perspective on EU control of FIFA and UEFA*, London, Palgrave Macmillan, 2016, 125-126; K. PIJETLOVIC, *EU Sports Law and Breakaway Leagues in Football*, The Hague, T.M.C. Asser Press, 2015, 21.

²⁷ See Articles 289 and 294 TFEU.

²⁸ EC, *White Paper on Sport*, 11 July 2007.

²⁹ K. PIJETLOVIC, *EU Sports Law and Breakaway Leagues in Football*, The Hague, T.M.C. Asser Press, 2015, 10-11. The increased involvement of the EU institutions in sports led to a growing dialogue in the football landscape, i.e. on the one hand between football stakeholders themselves and on the other hand between football stakeholders and EU institutions (A. GEERAERT, *The EU in international sports governance – a principal agent perspective on EU control of FIFA and UEFA*, London, Palgrave Macmillan, 2016, 82; B. GARCÍA and M. DE WOLFF, "European law and the governance of sport" in J. ANDERSON, R. PARRISH and B. GARCÍA (eds.), *EU Sports law and Policy*, Cheltenham, Edward Elgar Publishing, 2018, 292-295). This stakeholder inclusive approach is characterised by allowing various stakeholders (e.g. the European Club Association (ECA), the European Leagues and FIFPro) to join in the decision-making process within UEFA and FIFA through different internal committees.

³⁰ EC, *White Paper on Sport*, 11 July 2007; EC, *Developing the European Dimension in Sport*, 18 January 2011 ("Good governance in sport is a condition for the autonomy and self-regulation of sport organisations"; "there are inter-linked principles that underpin sport governance at European level, such as autonomy within the limits of the law, democracy, transparency and accountability in decision-making, and inclusiveness in the representation of interested stakeholders."); Expert Group on Good Governance, *Promotion of existing Good Governance Principles. Final document* July 2016, 4. Furthermore, *EU work Plans for Sport* consistently consider good governance as one of the key

autonomy and good governance are inextricably linked. Sports governing bodies, including football governing bodies, that do not function according to good governance principles can expect their autonomy and self-regulatory practices to be curtailed³¹. Over the past years football governing bodies suffered severe governance issues³² including FIFA-Gate³³; domestic governance and/or ethics issues; and transparency issues related to individual club data on licensing and financial fair play (FFP) procedures, detailed player transfer information, and details of representation contracts with football agents, which are neither public nor easy to obtain. These issues have made the case for curtailing football governing bodies' autonomy a legitimate one³⁴.

1.5. Case study: anti-money laundering legislation

As a case study regarding unlevelled regulatory playing fields, Belgium's recent amendments to its existing anti-money laundering legislation can be briefly highlighted³⁵.

Since 1 July 2021, the Belgian preventative anti-money laundering law is applicable to Belgian professional football, more in particular to Belgian professional football clubs and to the national football association (Royal Belgian Football Association (RBFA)). Football agents are also in scope of the law, but - due to Belgium's internal constitutional division of powers between the federal level and the regional level - the law is not yet applicable to them. Football agents will come under the scope of the amended law at a time to be fixed by Royal Decree, after a cooperation agreement has been concluded between the Belgian federal government and the Regional governments.

Belgium stands alone in its approach: no other countries have introduced anti-money laundering legislation for professional football, and there is no requirement to do so from a European perspective. Unlike traditional actors subject to such legislation as banks and financial institutions, and, more recently, other actors, such as art galleries and auction houses³⁶, professional football is not targeted by the European anti-money laundering legal framework. Nor was professional football included in the recent legislative reform package regarding anti-money laundering announced by the European

items that should be given priority (EU Work Plan for Sport 2011-2014, *OJ C* 1 June 2011, 162, 1; EU Work Plan for Sport 2014-2017, *OJ C* 14 June 2014, 183, 12; EU Work Plan for Sport 2017-2020, *OJ C* 15 June 2017, 189, 5; EU Work Plan for Sport 2021-2024, *OJ C* 4 December 2020, 419, 1). Why good governance in sports matters, is explained *inter alia* in the European Parliamentary Research Service's January 2017 note on *good governance in sport*.

³¹ Expert Group "Good Governance", *Deliverable 2 Principles of good governance in sport*, September 2013, 3; see also J.-L. CHAPPELET, "The autonomy of sport and the EU", in J. ANDERSON, R. PARRISH and B. GARCÍA (eds.), *EU Sports law and Policy*, Cheltenham, Edward Elgar Publishing, 2018, 157-172.

³² See also more in general a recent plea for enhancing governance throughout the European sports model: R. AGAFONOVA, "International Skating Union versus European Commission: Is the European sports model under threat?", *Int. Sports Law J.* 2019, 87-101; S. DE DYCKER, "Good governance in Sport: comparative law aspects", *Int. Sports Law J.* 2019, 116-128; M. BADDELEY, "The extraordinary autonomy of sports bodies under Swiss law: lessons to be drawn", *Int. Sports Law J.* 2020, 3-17.

³³ For an extensive list of allegations against FIFA, see the European Parliament's resolution on recent revelations on high-level corruption cases in FIFA, 11 June 2015.

³⁴ R. HOUBEN and S. NUYS, *A new deal for professional football in the EU*, Cambridge, Intersentia, 2021, 52 p. In this respect, scholars note that the COVID pandemic may have shifted the relative bargaining power in favour of public authorities in the complex network of sport, further testing the limits of autonomy of sport: B. GARCIA, M. JAMES, D. KOLLER, J. LINDHOLM, D. MAVROMATI, R. PARRISH and R. RODENBERG, "The impact of Covid-19 on sports: a mid-way assessment", *Int. Sports Law J.* 2020, 115-119.

³⁵ See more elaborate: R. HOUBEN with cooperation of A. DE GEZELLE, A. VERHEES and P. VERMEULEN, "Het Belgisch profvoetbal aan anti-witwasnormering onderworpen. Een kritische analyse in context", RW (forthcoming).

Additionally, N. APPERMONT, one of the authors of this report, is currently involved a research project, funded by the UEFA Research Grant Programme, which aims to investigate legal framework of the amended Belgian preventative anti-money laundering mechanism insofar as it applies to (or will apply to) actors in the professional football sector.

³⁶ See art. 1(1) of Directive (EU) 2018/843 of the European Parliament and the Council of 30 May 2018 amending Directive (EU) 2015/849 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing, and amending Directives 2009/138/EC and 2013/36/EU.

Commission³⁷. Still, in its bi-annual follow-up of the so-called Fourth Anti-Money Laundering Directive³⁸ in 2019, the Commission acknowledged that the risks associated with sport have long been recognised at the EU-level and that sport 'is seen as a fertile ground for the use of illegal resources' and recommending that 'Member States should consider which actors should be covered by the obligation to report suspicious transactions and what requirements should apply to the control and registration of the account holders and the beneficiaries of the money'³⁹.

The introduction of anti-money laundering legislation for the professional football sector is an understandable policy choice, as it aims to introduce more transparency in professional football, which is much needed. The authors of this report are also in favour of increased transparency for professional football, and therefore the inclusion of professional football in anti-money laundering legislation, albeit with due attention for the specificities of professional football (such as the usual course of a transfer) and the role of the national and international federations.

Nevertheless, and how well-meant the Belgian initiative may be, from a European perspective it creates unlevelled regulatory playing fields⁴⁰. Belgian professional football clubs are required to comply with anti-money laundering legislation, with substantial internal governance requirements and massive administrative procedures as at the occasion of transactions (such as transfers), whereas all foreign professional clubs do not need to take into account such requirements. This constitutes a competitive disadvantage for Belgian professional football clubs. We therefore criticize the level at which the legislative amendments were introduced. Introducing additional transparency in professional football is something that should be done at European level, ideally in the execution of global standards set out by the FATF, so as to avoid unlevelled regulatory playing fields, so that clubs from a regulatory perspective are treated equally in the internal market. In addition, the issue of money laundering, to the extent it is a problem in professional football, can only be addressed effectively through European legislation, as the issue would intrinsically be a cross-border issue, given professional football's European and even global markets. Ideally, this is done via the introduction of a EU license system, of which anti-money laundering legislation forms part. The alternative is to include professional football in the EU anti-money laundering legislation as a separate initiative.

1.6. Regulatory competition from a players' perspective: here comes tax

Compared to clubs, players have the advantage that they are mobile and can move around. Hence, from a practical perspective, players benefit from regulatory competition between Member States, as such competition allows them to cherry-pick a club in a country that has, from the perspective of the player, an advantageous regulatory framework. Clubs do not have the same liberty, as they are intrinsically linked to a geographical location, without any real possibility to move⁴¹. From that perspective, unlevelled regulatory playing fields are not so much an issue for players, but all the more for clubs, as set out above and will be further elaborated hereinafter.

³⁷ See https://ec.europa.eu/info/publications/210720-anti-money-laundering-counterinq-financing-terrorism_en.

³⁸ Directive (EU) 2015/849 of the European Parliament and the Council of 20 May 2015 on the prevention of the use of the financial system for the purposes of money laundering and terrorist financing, amending Regulation (EU) No 648/2012 of the European Parliament and the Council and repealing Directive 2005/60/EC of the European Parliament and of the Council and Commission Directive 2006/70/EC.

³⁹ Report from the European Commission to the European Parliament and the Council on the assessment of the risk of money laundering and terrorist financing affecting the internal market and relating to cross-border activities", COM(2019) 370 final, p. 5 and p. 19.

⁴⁰ However, to the extent that this phenomenon would constitute 'reverse discrimination', it is not incompatible with EU-law, see: D. HANF, "Reverse discrimination in EU Law: Constitutional Aberration, Constitutional Necessity or Judicial Choice?", *Maastricht Journal of European and Comparative Law* 2011, 29-61; V. VERBIST, *Reverse Discrimination in the European Union: A Recurring Balancing Act*, Cambridge, Intersentia, 2017, 357 p.

⁴¹ Notwithstanding occasional initiatives, such as cup matches played abroad.

What makes a Member State advantageous from the perspective of a player? Arguably, the tax and social security treatment of a football players' remuneration is a key factor. In so far players' remuneration is taxed favourably and/or enjoys a favourable treatment under social security laws in a certain Member State, players can be more inclined to play in that Member State instead of in another Member State, where he/she would receive a lower net amount of remuneration because of higher taxes and/or higher contributions to that state's social security scheme⁴². Of course, the tax and social security treatment of players' remuneration is not the only element in a players' decision making as to for which club he/she wants to play. Also other, more personal factors can be in play, such as familial or nationalistic motives, getting more pitch time, being end of career, regarding a club as a stepping-stone towards a more prestigious national competition, etc. Yet, nevertheless, it is clear that the tax and social security treatment of players' wages will be paramount in most cases and have a large impact on the personal financial situation of the player. As a result, indirectly, but certainly, the tax and social security treatment of a player's remuneration also impacts the ability of clubs to attract top notch talented players. In short, players can be more inclined to play for a club located in a Member State with an advantageous regulatory framework hosting a top tier competition.

1.7. Various tax and social security treatments of professional football throughout the EU

Throughout the EU there are various approaches towards the taxation and social security position of professional football. Nevertheless, a common thread, that will become apparent throughout this study, is that all in scope countries are united in diversity, whilst pursuing a common aim: Member States take a different approach to players taxation⁴³, but most realise the importance of an attractive tax regime for a continuously growing industry.

To the extent national regimes approach this common aim differently, it could be argued that they contribute to unlevelled regulatory playing fields for clubs within the internal market, which adds to distorted competition in the business of professional football. Regardless how matters stand, levelling the tax and social security playing field for professional football throughout the EU is in any event less evident as levelling the regulatory and supervisory playing fields for professional football clubs and football agents in the form of harmonised license requirements. This has everything to do with the TFEU treatment of tax and social security matters. Such matters are traditionally Member State strongholds, for which the possibility to harmonize laws is limited. In accordance with Article 115 TFEU, harmonization of direct taxation, such as the taxation of players' wages, requires unanimity among Member States, which is, obviously, not easy to obtain. As regards social security matters, on the basis of Article 153 TFEU, the EU can solely support and complement the activities of the Member States, leaving Member States behind the steering wheel.

⁴² In support of this claim, we can point to the (limited) amount of empirical research which has been conducted in this field. SEE H. KLEVEN, C. LANDAIS and E. SAEZ, "Taxation and International Migration of Superstars: Evidence from the European Football Market", *American Economic Review* 2013, 1892-1924 confirm that the mobility response of football players to tax rates is large. Interestingly these scholars found evidence that low taxes attract high-ability players who displace low-ability players and that low taxes on foreigners displace domestic players. Also see, more in general: H. KLEVEN, C. LANDAIS, M. MUÑOZ and S. STANTCHEVA, "Taxation and Migration: Evidence and Policy Implications", *Journal of Economic Perspectives* 2020, 119-142.

Finally, we can also point to K. ESHQOOR, "Tax optimization in European Football: Attracting Top Talent" (available via *ResearchGate*, citing the papers by KLEVEN *et. al.*).

⁴³ See *infra* a comparative research of the tax treatment of players' remuneration between France, Germany, Italy, the Netherlands, Spain, Portugal and Belgium. Also the following report demonstrates great differences in net salary costs between clubs from Turkey, China, Germany, Spain, Italy, the Netherlands, England, Portugal and France: KPMG, "The European Champions Report 2017", https://www.footballbenchmark.com/documents/files/public/The_European_Champions_Report_2017.pdf, 2.

1.8. Scope and methodology of this study: the tax treatment of professional players' remuneration in a selected number of Member States and suggestions for a European approach

Hereinafter, this in-depth study scrutinises the tax treatment of professional football players' remuneration in various Member States. This is one, yet arguably the most important, component of Member States' tax policies towards professional football. Other elements are, however, also important to get a more encompassing view on the disparity of the tax and social security treatment of professional football within the EU, such as the tax treatment of football clubs' income and the impact of social security and/or subsidies regimes. To be able to truly compare the effect of Member States' tax and social security treatment of professional football, research should be conducted into all these elements and all these elements should be taken into consideration. This is, however, not feasible in a first, more exploratory study, that predominantly intends to scrutinise various tax and social security treatments of professional football and to suggest and evaluate European ways forward, so as to avoid unfair taxation throughout the EU⁴⁴. Therefore, this study focuses on the taxation of players' remuneration, leaving other factors influencing the tax and social security treatment of professional football aside for follow-up research. The tax treatment of players' remuneration is analysed in a selected number of Member States that host top or sub top football competitions. In scope are: Belgium, France, Germany, Italy, the Netherlands, Portugal and Spain. France, Germany, Italy and Spain host top competitions, whereas Portugal, Belgium and the Netherlands host sub top competitions⁴⁵. For the top competitions, we also provide average salary data per club in this report.

Comparing the tax treatment of players' remuneration in different countries is not self-evident as multiple factors can be relevant. Players will typically enjoy a fixed wage as an employee. In practice, they often also benefit from a variety of other remuneration components such as (signing) bonus payments, allowances for costs, contributions to a pension scheme, payments for the use of intellectual property rights or advertising income and even cryptocurrencies such as club fan tokens⁴⁶. A high marginal tax rate for salary income might disguise the beneficial build-up of an after-career pension plan. Conversely, players benefitting from low tax rates for income obtained during their career might forego on other career facilities concerning the protection of players' rights and social security⁴⁷. Moreover, a legal framework requires implementation. Countries and their tax administration may have different approaches to enforcement of tax laws: even if two countries would have a favourable tax framework in place for income obtained from the licensing of image rights, they may have conflicting views on the (percentual) amount of income that can reasonably be obtained in this way. Football is moreover a global sport, having as a consequence that players will earn income for work done in their residence country as well as for work performed abroad. Some states will easily exempt income obtained abroad, whereas others will only allow this under more stringent conditions.

⁴⁴ Also see C. MICHEAU, *State Aid, Subsidy and Tax Incentives under EU and WTO Law*, Alphen aan Den Rijn, Kluwer Law International, 2014, 27-28; B. J. KIEKEBELD, *Harmful tax competition in the European Union*, Alphen aan den Rijn, Kluwer, 2004, 13-14.

⁴⁵ To substantiate this claim, we can refer to the UEFA Country coefficients 2021/22, which rank the national competitions in England, Spain, Italy, Germany and France on the top five spots. The Portuguese, Dutch and Belgian competitions are ranked sixth, seventh and thirteenth, respectively. These coefficients are based on the results of each national association's clubs in the five previous UEFA Champions League and UEFA Europa League seasons. These coefficients therefore provide a good picture of the competitiveness of the clubs of each national association *vis-à-vis* the other national associations in Europe. See: <https://www.uefa.com/memberassociations/uefarankings/country/#/yr/2022>.

⁴⁶ See e.g. the case of top player Lionel Messi upon his transfer to the French club Paris Saint-Germain in the summer of 2021. See: <https://www.reuters.com/lifestyle/sports/exclusive-messis-paris-st-germain-package-includes-crypto-fan-tokens-2021-08-12/>.

⁴⁷ Eastern European countries are often perceived as low tax countries, but have a framework which does not aid social protection for players: EY, "Tax And Career Facilities For Professional Football Players in 2013", <http://www.spins.si/design/uploads/content/FIFPro%20proef%204.pdf>, 5.

For reasons of feasibility and comparability, we do not intend to factor in all these elements in our analysis. In our comparison of the tax regime for players in Belgium, France, Germany, Italy, the Netherlands, Portugal and Spain, the focus will mainly lie on the general tax framework and the *rationale* behind the framework in place. We will compare the tax treatment of players' remuneration in these countries with the normal tax practice of these countries for non-sportive taxpayers. If the normal tax practice would be different from the tax regime for football players, we will identify the *rationale* behind the specific tax regime. In view of designing a potential common European approach, we will compare findings between the in scope EU Member States. Throughout this comparison, we will take into account recent events such as the widespread attention for the (perceived) tax optimal use of image rights by football players and the increase of so-called tax inspired moves from football players from one country to another.

The results of our comparative research relate to the tax treatments of players' remuneration, but will allow to exemplify the issue of various tax treatments of professional football in various Member States also from a more general perspective, albeit that, as aforementioned, to be able to obtain a more encompassing overall view, follow-up research is required.

Our research relates to professional football only. Grassroots football is not addressed in this report.

As a concluding preliminary remark we make note of the following. Our study focuses on the various approaches of Member States regarding the taxation of professional football mostly from a cross-border mobility perspective. We wish to emphasize, however, that from a policy perspective this is not the only relevant perspective to assess the merits of a national system.

Firstly, cross-border mobility is only relevant for a limited segment of the football market; for many professional players cross-border mobility is not relevant, as they spend their entire career in domestic professional competitions, without a possibility or desire to play abroad. However, national football competitions are becoming increasingly international, as cross-border mobility of football players has increased steadily over the years⁴⁸.

Nevertheless, the debate on Member States' tax approaches should not be narrowed down to only these (top) players that are confronted with issues of cross-border mobility and from a (domestic) policy perspective, all relevant elements should be taken into account. Taking that perspective, a beneficial tax regime that is intended to attract top players from abroad, yet is not applicable to domestic players, should probably be assessed differently than a domestic tax regime that applies to all players in a certain Member State. The former regime will clearly aim at improving inward cross-border mobility, and doing so generates a certain level of inequality between players in a certain country, whereas the latter system is not necessarily designed to improve cross-border mobility and treats all players equal within that Member State. The limited amount of empirical research in this field indeed points to the fact that, in order to draw in top talent from abroad, it is more cost-efficient to introduce foreigner-specific tax breaks, since many domestic players already play at home⁴⁹.

Secondly, a football players' career is characterised by risks and uncertainties, such as potential injuries, and more in general short careers, given a player is typically no longer fit for duty as at his/her mid-thirties, some exceptions aside. In the same vein, social security protection, even in event of injury, may be very limited. Therefore, a professional football players' career is not comparable to a career outside of sports. These factors are relevant to our assessment of the tax and social security treatment of

⁴⁸ CIES Football Observatory Report n° 65, May 2021, <https://football-observatory.com/IMG/sites/mr/mr65/en/>.

⁴⁹ See H. KLEVEN, C. LANDAIS and E. SAEZ, "Taxation and International Migration of Superstars: Evidence from the European Football Market", *American Economic Review* 2013, 1923.

players' remuneration too. Moreover, they warrant a tailor-made tax and social security approach for professional football. As a side note, granting tax benefits to a certain sector, because of its specificities, is not unique to football, nor to sports; there are numerous examples of other sectors of the economy that enjoy tax benefits, e.g. in Belgium the fishery sector, the sector of night labour, R&D-activities, start-ups, etc.

Thirdly, professional football clubs generally invest in youth development and community service, through numerous corporate social responsibility initiatives. In this respect, it is also relevant to emphasize the interaction with grassroots football. Professional football is indebted to grassroots football, as most young players start their careers at an amateur club. *Vice versa*, grassroots football is indebted to professional football, as not seldom, players in higher-end grassroots football have enjoyed an education, fully or partially, at a professional football club. Moreover, through corporate social responsibility initiatives professional football supports grassroots football, e.g. operationally and/or from the perspective of youth development.

Fourthly, professional football is a continuously growing economic sector, that not only provides employment to football players, but also a whole set of other employees, and in its wake generates business for other economic actors too. This is beneficial for the economy as a whole and benefits society as a whole.

These are some of the elements that make the professional football sector specific, which in turn may warrant a specific, tailored regulatory approach and tax treatment. These factors, hence, help to explain why the professional football sector in general is often granted tax benefits: as aforementioned and as will be further elaborated throughout this study, all in scope Member States realise the importance of an attractive tax regime for a continuously growing industry. However, this is ultimately a political choice and a matter of policy.

Of course, the underlying assumption for such position should be that the system in place is fair, both from an internal domestic perspective, as from a more European cross-border perspective, with as clarification that a supportive tax approach regarding professional football in itself does not create unfairness.

The above illustrates that the football sector has its specific characteristics, distinguishing that sector from other sectors: professional football players' careers are much shorter and subject to perils such as injuries; the sector, through its corporate social responsibility initiatives, but also intrinsically because of its popularity amongst EU citizens and beyond, has significant societal relevance; the football economy is continuously growing etc. From a regulatory and policy perspective, these elements carry certain weight. This does not in itself mean that the football sector is of greater importance or necessarily carries more weight than other sectors. From a societal perspective, it is self-evident that professional football players are not more important than nurses, bank clerks, cashiers, hair dressers, etc. Yet on the other hand, it is undeniable that playing professional football is a different profession from others. As a matter of fact a professional football player: possesses sporting skills others do not possess (nor can develop), can exercise those skills only during a short period of time while others are normally not subject to such (physical) limitations regarding the length of their career, are to a larger extent than other sectors dependent on physical fitness (no injuries) throughout their career. Moreover, the football sector, through its popularity amongst citizens of the Unions and beyond, generates more attention than most sectors and, consequently, on average, has a larger impact. These are not judgements in favour of the football sector, nor against others sector, but mere observations. Policy makers can do with them as they see fit. It is not the intention of the authors to take any stance in this respect; the sole intention of the authors is to fuel the debate with objective and academic

analyses, contributing to further awareness and nuance. The authors' opinion is that such contribution is indispensable, given that academia is largely absent in the debate up until today.

In the remainder of this study, we will focus on taxation of players' remuneration from a European, cross-border mobility 'level playing fields' perspective, not to minimise all aforementioned considerations, yet to enhance feasibility of this first exploratory study and, of course, also to be able to formulate policy recommendations to the European Parliament, which obviously requires a more cross-border focus.

2. THE TAX TREATMENT OF PROFESSIONAL FOOTBALL PLAYER'S REMUNERATION: CASE STUDIES

2.1. Belgium

KEY FINDINGS

- A Belgian tax resident professional football player will be taxed according to progressive income tax rates, the marginal tax rate being 50% for income obtained in excess of EUR 41.360 income on an annual basis.
- Players employed with a Belgian football club and active in the Belgian first league, will usually qualify as tax resident.
- Players under 26 enjoy a minor tax benefit in the form of a reduced tax rate for a first amount of EUR 20.520 gross income. For the remainder, they are subject to the same income tax rules as other football players.
- Football clubs are not obliged to pay wage withholding tax in full to the Belgian state. This measure is subject to conditions and not football industry specific. The measure equally applies for other sports clubs, as well as for other employers (R&D-activities, maritime industry, start-ups,...).

2.1.1. Introduction

Belgium ranked 3rd out of 37 Organisation for Economic Co-operation and Development (OECD) countries in terms of the tax-to-GDP ratio in 2019 (tax-to-GDP ratio of 42.9% compared with the OECD average of 33.8%). Relative to the OECD average, the tax structure in Belgium is amongst others characterised by higher revenues from taxes on personal income and social security contributions⁵⁰.

Belgium ranks 13th in the UEFA association club coefficient ranking 2021/22, behind all the other countries subject of this study. For purposes of this study, Belgium is considered to host a sub top competition.

2.1.2. A tale from the past

The current Belgian framework for the taxation of professional football players is largely in place since 2007⁵¹. Its origin should be assessed against the background of the changes that lead to the current framework.

Prior to 2007, foreign football players often qualified as tax non-resident and therefore were subject to a liberatory 18% withholding tax (as compared to the generally applicable progressive income tax rates for residents). This 18% withholding tax is still applicable today for tax non-resident athletes and entertainers. It is not a tax stimulus but is to be seen in the context of double tax treaties. According to the OECD double tax treaty standard, countries are allowed to tax income earned in their territory by

⁵⁰ See <https://www.oecd.org/tax/revenue-statistics-belgium.pdf>.

⁵¹ Wet van 4 mei 2007 betreffende het fiscaal statuut van de bezoldigde sportbeoefenaars, BS 15 mei 2007.

non-resident sportspersons. This is mainly done through flat withholding tax rates at source⁵², which are however often levied on gross income rather than on net income. It is therefore claimed that the Belgian 18% for non-residents compares to an effective tax rate of 36%⁵³. Assuming non-resident athletes and sportspersons do not obtain most of their annual income in Belgium, the (hypothetical) 36% tax rate is more in line with the hypothetical applicable tax rate for a tax resident artist or sportsperson.

Nevertheless, in 2007 policymakers felt the need to make changes to the tax framework applicable at that time. It was perceived that (amongst other things) professional football players qualified too easily as tax non-resident, allowing them to apply the 18% gross withholding tax over their labour income. It should thereby be clarified that the tax non-residency status was usually granted through an administrative application procedure before the tax authorities. The Belgian tax administration had a ruling procedure in place, comparable to procedures often seen in expatriate tax regimes, which allowed football players, as well as basketball and volleyball players, to be recognised as a tax non-resident player.

According to policymakers, this administrative practice led to an important influx of foreign players, restricting the possibilities for home grown players to reach the first team of their football club. After redesigning the tax landscape in 2007, this administrative practice was put to a hold and football players' tax residency will now be determined based on a more strict interpretation of Belgian tax law. Nowadays, professional football players active in Belgium will thus seldom apply the 18% withholding tax rate. After the 2007 reform, the rate is only applicable to sportspersons performing a limited number of days in Belgium. Professional football players employed with a Belgian team and therefore playing on a weekly basis in Belgium, will exceed this limited number of days and thus in principle be taxed as a normal Belgian tax resident, as will be explained hereafter.

2.1.3. The tax framework for football players

Individuals who are tax resident in Belgium, will be liable to income tax on their worldwide income. Football players will be tax resident in Belgium under the same rules as other taxpayers. They will be tax resident, either when they have their domicile in Belgium, either when their so-called seat of fortune is established in Belgium. Domicile will in practice be the most distinctive criterion for football players to qualify as Belgian tax resident⁵⁴. A registration in the Belgian population register serves as a presumption of Belgian tax residency. Although tax residency discussions are possible on a case-by-case basis (e.g. players on loan), little to no cases are known linked to tax residency fraud by professional football, i.e. football players fraudulently claiming tax non-residence in Belgium. Since the 2007 changes, tax non-residents also will be taxable at progressive tax rates. Tax compliance is assured via a declaration of the income and tax withholding by the Belgian club.

⁵² For an overview, see PEARLE, "The Ultimate Cookbook For Cultural Managers – Artist Taxation In An International Context", <https://www.pearle.eu/publication/the-ultimate-cookbook-for-cultural-managers-artist-taxation-in-an-international-context>.

⁵³ Wetsvoorstel betreffende het fiscaal statuut van de bezoldigde sportbeoefenaar, *Parl. St. Kamer* 2005-06, nr. 2787/001, 3.

⁵⁴ See www.ibfd.org.

Belgian tax resident football players will be taxable according to personal income tax rules. As mentioned, the same is true for most non-resident football players. This means that, as far as tax residents are concerned, their worldwide income will be taxed at the following progressive tax rates⁵⁵:

Table 1: Income tax rates Belgium

Taxable income (EUR)		Rate (%)	
Up to and including		13,540	25
13,541	-	23,900	40
23,901	-	41,360	45
Over		41,360	50

Source: authors.

The individual income tax calculated according to the table above is increased by a regional and municipal surcharge.

Belgium does not have a structural specific tax favourable regime for individual football players. Belgium has an expatriate tax regime⁵⁶, which is applicable to non-Belgian (corporate) executives who are exclusively engaged in activities requiring special knowledge and responsibility (i.e., supervisory and management functions). Even though it could be theoretically possible, football players will usually not qualify for this regime.

As mentioned, in 2007 policy makers were under the impression that home grown football players were given less chances to reach the first team and start a professional career as football players. It was assumed that these restrictions also followed from the applicable tax regime at the time. As mentioned, this ancient tax regime stimulated the qualification of foreign football players as tax non-resident, allowing them to apply the 18% withholding tax rate. This regime was abolished, and alongside measures were introduced to help home grown football players reach their goal and become a professional football player. One of these measures relates to the introduction of a tax benefit for younger football players. This measure allows young players (players below 26 years on the first of January of the tax year) to benefit from a flat tax rate of 16,5% for a first amount of EUR 20.520 gross income (tax year 2021- assessment year 2022). Income received above this amount will be taxable according to the higher mentioned applicable progressive tax rates. Seeing that all Belgian tax resident taxpayers benefit from a lump sum tax exemption on the first EUR 9.050 (tax year 2021 – assessment year 2022) of income, the tax benefit for young football players is rather insignificant, both from the perspective of the individual player as from a tax policy perspective.

Personal income tax is mainly collected through wage withholding. Wage withholding is mandatory for tax resident employers or establishments of tax non-resident employers. Employers will need to transfer the withheld tax in full, albeit that several exemptions are in place allowing a partial payment of wage withholding tax by the employer to the authorities. These exemptions apply for instance in relation to employers paying wages to workers performing night labour, workers employed in R&D-activities, in the maritime industry, for start-ups, ...

When reforming the Belgian tax system for sportspersons in 2007, the legislator also enacted a partial exemption from payment of withholding tax for sport clubs. Belgian sport clubs at the time often contracted players on an after-tax basis, and therefore applied the higher mentioned 18% tax rate when

⁵⁵ The individual income tax rates applied on aggregated income for tax year 2021 – assessment year 2022.

⁵⁶ Circ. Ci.RH.624/325.294 (Bull. nr. 620, pag. 2061) of 8 August 1983.

determining the applicable wage withholding tax for non-resident ('foreign') players. The change in the tax regime, whereby the tax non-residency qualification was put to an end, confronted these clubs with a liquidity problem: they granted a net salary to players, and grossing up the salary according to (new) progressive tax rates would poor them into financial distress. To improve liquidity and safeguard employment, clubs in the sports industry (not only football clubs) were therefore allowed to retain a percentage of the withholding tax on players wages for their own functioning. At the same time, the mechanism of the partial exemption of wage withholding tax, allowed the legislator to steer the spending of clubs into its desired direction. Indeed, the partial exemption is conditional in the sense that tax withheld on wages paid to football players aged 26 and older, needs to be spent mainly on the education of players below the age of 23. If not correctly spent, the clubs will need to pay the withheld tax after all, increased with interests for late payment.

In Belgium, one political party questioned whether this partial exemption from payment of withholding tax should be considered as (illegal) fiscal State aid⁵⁷.

2.1.4. Recent events

Noteworthy recent events are:

- The 2017-2019 Belgian football fraud scandal: The investigation, also known as *Operation Zero* officially and *Operation Clean Hands* informally (Dutch: Operatie Propere Handen), is conducted by the Belgian Federal Public Prosecutor's Office. The investigation is concerned with organised crime, money laundering and private corruption (bribery) in Belgian football, division 1A and division 1B specifically. Albeit that the investigation was not mainly tax-induced, it is claimed that some of the individuals in scope of the investigation also tried to avoid or evade taxation. In the aftermath of the scandal, several proposals have been made to remedy (alleged) issues in Belgian football, such as excessive commission fees by players agents. The latest proposal in this respect worth mentioning is a proposal by political party CD&V, which suggest stopping off the tax deductibility of agent fees paid by clubs⁵⁸.
- Actions in relation to tax optimization through use of image rights: Belgium does not have a specific favourable tax regime in place for the use of image rights. Under certain conditions, copyrights income can favour from reduced tax rates. This regime, often referred to as the Belgian copyrights' regime, is however to be seen in a specific context and it is usually assumed that image rights income does not qualify under this regime. Albeit income from image rights can qualify as movable income (subject to a flat tax rate of 30%), recent case law shows that it will likely be qualified as professional income and taxed as such, for active players⁵⁹. Furthermore, it is claimed in popular press that some high-profile Belgian football players allocated their image rights to Luxembourg companies in order to apply the favourable Luxembourg regime for income from image rights. To the extent this even was a widespread practice in Belgian football, the relevance will have diminished since the amendments of the regime in Luxembourg. Contemporary press articles mention that several top football players

⁵⁷ See e.g. Wetsvoorstel tot wijziging van diverse bepalingen met betrekking tot voordelen voor sportclubs, *Parl.St. Kamer* 2019-2020, nr. 55-0911/001, 8-25.

⁵⁸ To this effect, MP's of this political party have introduced a bill targeting the Belgian income tax framework for professional sports, see: Wetsvoorstel tot wijziging van diverse bepalingen met betrekking tot voordelen voor sportclubs, *Parl.St. Kamer* 2019-2020, nr. 55-0911/001.

⁵⁹ Court of Appeal Gent, June 30, 2018, discussed by S. VAN CROMBRUGGE, "Opbrengsten van beroepsvoetballer uit portretrecht zijn baten", *Fiscoleg Internationaal* 415, 7.

with the Belgian nationality have resorted to UK-based companies to manage their image rights due to decreasing corporate income tax rates⁶⁰.

- Belgian political parties Vooruit and CD&V have, separately from each other, introduced draft-legislation with a view to reform the Belgian tax regime for athletes. Vooruit aims at the abolishment of the wage withholding tax reduction mechanism⁶¹. The CD&V-proposal⁶² mainly refines the current system from a technical perspective and proposes amendments to the social security regime for football players. The debate on the substance of these proposals is still to follow.

2.2. The Netherlands

KEY FINDINGS

- A Dutch tax resident professional football player will be taxed according to a two-tier rate band, and income more than EUR 68.507 will be taxed at a 49,50% rate.
- Players employed with a Dutch football club active in the Dutch first league, will usually qualify as tax resident.
- Football clubs actively use the Dutch '30%-ruling' which allows the payment of 30% of a player's salary free from wage withholding tax, which can reduce the effective tax rate over football players income to some 36%. The KNVB and Dutch tax authorities agreed upon criteria to allow application of the 30%-ruling. Together with other affected parties, the KNVB successfully advocated the conservation of the 30%-ruling in 2017.

2.2.1. Introduction

The Netherlands ranked 11th out of 37 OECD countries in terms of the tax-to-GDP ratio in 2019 (tax-to-GDP ratio of 39.3% compared with the OECD average of 33.8%). Relative to the OECD average, the tax structure in the Netherlands is amongst others characterised by higher revenues from social security contributions and a lower proportion of revenues by taxes on personal income, profits and gains⁶³.

The Netherlands ranks 7th in the UEFA association club coefficient ranking 2021/22. For purposes of this study, the Netherlands is considered to host a sub top competition.

2.2.2. The tax framework for football players

The Netherlands income tax is levied on individuals resident in the Netherlands on the basis of taxable worldwide income from various categories. There is no clear definition of "residence" in the internal tax law. Under article 4 of the General Tax Act (GTA), residence is to be determined "according to the facts and circumstances". Under case law, the following facts and circumstances are considered particularly relevant: the availability of a permanent home, the place where the partner and under-age children live

⁶⁰ See e.g. press articles dated on 21 February 2021: <https://www.voetbalbelgie.be/specials/11-rode-duivels/2021/02/12/> and https://www.standaard.be/cnt/dmf20210211_98282895.

⁶¹ Wetsvoorstel tot opheffing van diverse bepalingen betreffende de sociale bijdragen en inkomstenbelasting van betaalde sportbeoefenaars, 18 November 2019, Doc 55 0764/001.

⁶² Wetsvoorstel tot wijziging van diverse bepalingen met betrekking tot voordelen voor sportclubs, 7 Januari 2020, Doc 55 0911/001.

⁶³ See <https://www.oecd.org/tax/revenue-statistics-netherlands.pdf>.

and the place of personal and economic relations (e.g. the place of employment). Football players employed in The Netherlands, will usually qualify as tax resident⁶⁴.

Non-resident artists, musicians and sportsmen performing in the Netherlands, who are resident in Aruba, treaty countries, the BES Islands (Bonaire, St. Eustatius and Saba), Curaçao or St. Maarten, are not taxed in the Netherlands in respect of income earned from such performances. This tax treatment is currently under review.

Taxable income will be categorised in one of three categories, known as 'boxes'. Football players income will usually be taxable in Box 1, being the box for earned income. With effect from 1 January 2020, the Income Tax Law (article 2.10 of the IB) provides for a two-bracket rate system. Only the first bracket of income is taxed at a rate that includes the rate for the state social security contributions. The maximum amount taxed in this bracket is equal to the maximum income on which the state social security contributions are levied. The base amount on which the state social security contributions are levied is the same as for income tax purposes, i.e., after deduction of the personal allowances. For 2021, the tax rates are as follows⁶⁵:

Table 2: Income tax rates the Netherlands

Taxable income (EUR)		Tax on higher amount (EUR)	Rate on excess (%)
Up to and including	68,507	25,416	37.10
Over	68,507		49.50

Source: authors.

As explained above, the rate in the first bracket consists of two elements: income tax and social security contributions. The income tax rate is 9.45%. The social security contributions are 27.65%. Payment of the tax is also to a great extent assured by wage withholding by the employer. Note that employers also are subject to employers' levies for social security insurances over the gross wages, which can be as much as an additional 20% over the gross salary up to a maximum salary of some EUR 58.311 (tax year 2021 – assessment year 2022). Several wage tax reductions are granted as tax incentives, i.e., for salaries paid in respect of research and development activities or for workers employed on ships sailing under the Netherlands flag⁶⁶. No reductions are granted on wage withholding tax levied from salaries paid to professional football players.

After the introduction of the system of taxation of savings and investment income under Box 3, the net wealth tax was abolished. Box 3, income from savings and investments, replaces ordinary taxation of various types of income from capital, other than deemed income from owner-occupied dwellings (Box 1) and dividends and capital gains from substantial (5%) shareholdings (Box 2). Taxation of Box 3 is based on a weighted notional yield on net assets which is taxed at a flat rate of 31% (in 2021).

Foreign highly qualified employees who are temporarily assigned to the Netherlands may qualify for 'the 30% ruling', by which 30% of their employment income is considered a tax-free reimbursement for living abroad. This reimbursement is exempt from wage/income taxation. The idea behind this tax exemption is that this allowance compensates these employees for specific expatriate costs (referred to as "extraterritorial costs"). The 30% ruling also applies to accrued holiday payments, incentive payments, or payment to compensate outstanding vacation days, if these are paid in the month

⁶⁴ See www.ibfd.org.

⁶⁵ For taxpayers younger than the pension age as fixed by the Dutch 'Algemene Oudersdomswet'.

⁶⁶ D.V.E.M. VAN DER WIEL-RAMMELLOO, J.P.E. DE COCK, T.J.M. VAN SCHENDEL and H.C. VERPLOEGH, *o.c.*, 604.

following the month that the employment or assignment in the Netherlands has ended. In short⁶⁷, the conditions for application of this provision are:

- the employee is hired from abroad and employed in The Netherlands: the employer must be an employer withholding wage tax according to article 6. Furthermore, the foreign employee must not, during two thirds of the last 24 months before his employment in the Netherlands, have been resident in a place which is situated within 150 km from the Netherlands border. On 4 March 2016, the Dutch Supreme Court confirmed the decision of the CJEU in the case of Sopora (C-512/13), in which the CJEU had found that the 150 km-criterion was not incompatible with free movement of workers as it does not result in systematic overcompensation of incoming workers from a place more than 150 km from the Dutch border;
- periods of working and/or living in the Netherlands over the past 25 years reduce the application term of the ruling;
- the employee must have specific know-how which is rarely available in the domestic labour market at the time the employment contract is concluded (hereafter referred to as the 'know how-condition'). To this effect, the expatriate is required to earn a minimum taxable salary of EUR 38,961 or EUR 29,616 (in 2021) for expatriates younger than 30 years holding a PhD or master's degree. Scientists and researchers working at universities and knowledge organizations are exempt from the salary requirement;
- with effect from 1 January 2019, the 30%-ruling period is reduced from 8 to 5 years (60 months), however, grandfathering rules apply.

Under the 30%-ruling, the employer may reimburse costs tax free to the employee up to a maximum of 30% of the salary and a compensation for additional costs for residing in the Netherlands (extraterritorial costs). The 30% ruling does not apply to payments received as compensation on termination of employment. The additional costs of maintaining a second home in view of an employment carried on in the Netherlands are treated as extraterritorial costs that should be covered by the 30% exempt threshold and may not be reimbursed by the employer on a tax-free basis. The same applies to any additional housing costs suffered by an employee compared to those which would be incurred in his country of origin. The salary includes all payments in cash and the cash value of salary in kind: incidental payments are included. Also included is income for a car provided by the employer. In addition to the 30% reimbursement, the employer may give a tax-free reimbursement for school fees for an international school for primary and secondary education for children of the employee.

Employees qualifying for the 30% ruling will usually be tax resident for income taxation under Box 1 (earned income and income from owner-occupied dwellings). This means that those employees are entitled to the deductions from income in this box, personal deductions and exemptions, the general tax credit and the deduction of interest paid on a mortgage loan used to finance a main dwelling. With respect to income from substantial shareholdings (Box 2) and income from savings and investments (Box 3), employees qualifying for the 30% ruling can opt to qualify as 'foreign tax payer'. This means that non-Dutch sourced income as well as for 5% or more shares in foreign legal entities, and any other assets except for second homes in the Netherlands, the relevant taxpayer is exempt. This also applies

⁶⁷ For a more comprehensive overview, see: www.ibfd.org; Algemene Rekenkamer, "Fiscale tegemoetkoming voor experts uit het buitenland: de 30%-regeling", Den Haag: Algemene Rekenkamer 2016; V.S.J. BANSRAJ, "De 30%-regeling", in *Fiscale Economie* 2014 (<http://hdl.handle.net/2105/17617>). R.P. SCHALEKAMP, "De 30%-regeling voor ingekomen werknemers. Stand van zaken per juni 2017", *MBB* 2017/09.

to certain savings investments in shares, bonds, bank balances etc, even if maintained with Dutch banks.

The application of the 30%-ruling is rather important for the tax attractiveness of Dutch football as well. The national football institution KNVB has therefore concluded an agreement with the Dutch tax authorities on the application of the 30%-rule by football clubs⁶⁸. Through this agreement, the KNVB essentially agreed upon football industry specific criteria to fulfil the 30%-ruling conditions. Players will amongst others qualify if they have played a sufficient amount of games for their former football club (based in a country which ranks in the FIFA-top 30 or the UEFA top 15), during a period of 24 months prior to being engaged in the Netherlands. Alternative criteria are linked to having played a considerable number of games for a national team or having experience in the Champions League (qualifiers or main tournament) or UEFA Cup (main tournament). KNVB and the Dutch tax authorities also agreed to a salary criterion, in fact having as a consequence that a football player would need to earn 8 to 10 times the income of which would be required for normal workers to qualify for the 30%-ruling. Basically, this means that football players will qualify for the 30%-ruling on the basis of sportive requirements, financial requirements or a combination of both.

The ultimate beneficiary of the incentive will depend on the type of contract concluded between player and club. If a net salary deal is agreed upon, the benefit will mainly be for the Dutch professional club as an employer (lower total cost of salary). Otherwise, the 30% ruling will reduce the individual players' tax burden.

The application of the 30%-ruling was under review in the Netherlands in 2017. After a parliamentary initiative, several organizations (of which amongst others AmCham, the combined Dutch Universities, International School of Amsterdam, VNO-NCW) were able to give comments in relation to the application of the 30%-ruling and importance thereof for the Dutch investment climate⁶⁹. KNVB stated that the 30%-ruling is of vital interest for Dutch professional football clubs as:

- A change to the 30%-ruling conditions would substantially deteriorate the Dutch football competitiveness in comparison to surrounding countries, which all have tax measures in place to incentivize football.
- A diminishing appeal of the Dutch football competition would have a societal impact and lead to a smaller return on investment for many (small and big) professional businesses involved in the football industry⁷⁰.

As of today, the 30%-ruling is still in place, both in and outside the Dutch football sector. However, in Dutch legal literature, some commentators question whether the 30%-ruling is in line with European State aid law⁷¹.

2.2.3. Recent events

The Netherlands did not remain unspoken in the aftermath of the 2017 Football Leaks-scandal⁷². It is claimed that foreign (e.g. South American) football players repeatedly used Dutch companies to

⁶⁸ 'Mededeling invulling criterium deskundigheid profvoetballers', Rijksonverheid.nl. This agreement is reported to be valid until July 1, 2021: M.M.L. WILLEMS and B.J. MESTROM, "Fiscaliteit en sport" in S. JELLINGHAUS (ed), *Capita Sportrecht*, 's-Hertogenbosch, Gompel&Svacina, 2018, 415-460.

⁶⁹ A full overview of the reactions can be found here: https://www.tweedekamer.nl/debat_en_vergadering/commissievergaderingen/details?id=2017A02118.

⁷⁰ To this end, we can refer to the position paper by the KNVB, which can be accessed through the link provided in the previous footnote.

⁷¹ E.g. E. SWAVING DIJKSTRA, "De 30%-regeling en het staatssteun verbod: voorkomen is beter dan genezen", *Weekblad voor Fiscaal Recht* 2019/152.

⁷² See https://en.wikipedia.org/wiki/Football_Leaks.

repatriate profits linked to the exploitation of their image rights. Presumably, these structures benefited from the absence of withholding tax on royalties paid by Dutch companies to non-resident license holders. With effect from 1 January 2021, a withholding tax applies on royalties paid by Dutch resident companies to affiliated entities located in designated low-tax jurisdictions and in cases of tax abuse. This is not a football-specific measure, but likely impacts the functioning of the image rights-structures reported in the Football Leaks-scandal. Soon after the scandal, the Dutch National Bank (DNB) also said in a report that Banks and trust offices should pay more attention to the risk of involvement in money laundering and corruption related to football⁷³.

Despite the reference to The Netherlands as hub for image rights-companies in the international Football Leaks-scandal, preferential tax structuring with image rights seems inexistent for players active in The Netherlands. The Dutch authorities have early on always been sceptical about these optimization techniques, and successfully tackled some pilot cases before the Dutch Courts in the early 2000-years⁷⁴.

KEY FINDINGS

- French tax residents will usually be subject to rather high-income taxation, in combination with social security contributions.
- France does not have a specific tax regime in place for football players, but allows football players to qualify for the expatriate income tax regime which allows for significant tax benefits.
- Image right income can enjoy a specific treatment for social security purposes, allowing it not to qualify as professional income (rendering social security contributions for the employing clubs no longer applicable).

2.3. France

2.3.1. Introduction

France ranked 2nd out of 37 OECD countries in terms of the tax-to-GDP ratio in 2019. In 2019, France had a tax-to-GDP ratio of 45.4% compared with the OECD average of 33.8%. Relative to the OECD average, the tax structure in France is characterised by higher revenues from social security contributions, but a lower proportion of revenues from taxes on personal income⁷⁵.

France ranks 5th in the UEFA association club coefficient ranking 2021/22. For purposes of this study, France is considered to host a top competition.

2.3.2. The tax framework for football players

Subject to the provisions of applicable tax treaties, income tax is payable by individuals who are resident in France in respect of their worldwide income, and by individuals not resident in France on their French-source income only (article 4 A of the Code Général des impôts, hereafter: CGI).

⁷³ See <https://nos.nl/artikel/2152747-dnb-bank-moet-meer-doen-tegen-fraude-voetbalwereld>.

⁷⁴ D. MOLENAAR, "Ronaldo, voetbal en belastingontduiking", *WFR* 2019/29, 1-6.

⁷⁵ See <https://www.oecd.org/tax/revenue-statistics-france.pdf>.

Domestic tax law provides that a person (regardless of nationality) is treated as resident in France for the purposes of income tax if any of the conditions set out under article 4 B of the CGI is met. The definition of fiscal domicile originally provided under article 4 B is based on personal, professional and financial criteria. Whenever an individual fulfils at least one of these three criteria, he is deemed to be resident in France. Individuals with a home or principal place of residence in France, or carries on a trade, business or profession in France will qualify as tax resident in France. It is assumed that most football players active in France qualify under these tax residence rules and are subject to French income tax on their entire income⁷⁶.

The rules for the computation of income tax are, as in other in scope Member States, complex and are set out below. Under normal circumstances, and as in the other in scope Member States, income obtained by professional football players will be taxed like any other professional employment income. All professional employment income obtained by an individual taxpayer is considered to form gross taxable income (revenu brut global). From this gross taxable income, the taxpayer is entitled to deduct certain expenses in order to calculate net taxable income (revenu net imposable). Once the net taxable income has been determined, the progressive tax thereon is computed according to the family coefficient system and the tax rate schedule for the relevant year. The family coefficient system (quotient familial) takes into account the taxpayer's marital status and the number of dependent children. It effectively limits the effect of the progression of tax rates. Certain other categories of income are subject to flat-rate taxation in complete satisfaction of any tax liability on such income (interest, capital gains and certain types of royalties).

For the 2020 tax year (i.e. assessment year 2021), the income tax rates are:

Table 3: Income tax rates France

Taxable income per share (EUR)			Rate (%)
Up to		10,084	0
10,085	-	25,710	11
25,711	-	73,516	30
73,517	-	158,122	41
Over		158,123	45

Source: authors.

Where the income exceeds EUR 250,000 for a single taxpayer or EUR 500,000 for a married or cohabiting couple, the taxpayer must pay a special contribution. If the taxpayer is single, the contribution is equal to 3% and applies on the difference between EUR 250,000 and EUR 500,000 and is equal to 4% and applies on the amount exceeding EUR 500,000. If the taxpayer is married or in a civil union the contribution is equal to 3% and applies on the difference between EUR 500,000 and EUR 1 million and is equal to 4% and applies on the amount exceeding EUR 1 million (article 223 *sexies* of the CGI).

Net wealth tax was abolished by the 2018 Finance Law and as of 1 January 2018 replaced by a wealth tax assessed on real property and real property rights only, hereinafter referred to as 'real estate wealth tax' (impôt sur la fortune immobilière, IFI) (articles 964 to 983 of the CGI). Real estate wealth tax applies to real estate assets owned directly or indirectly through property companies or property investment funds which are not specifically exempt if their overall net value (i.e. after deduction of qualifying

⁷⁶ See www.ibfd.org.

liabilities) exceeds a certain threshold, which is EUR 1.3 million for 2020 and 2021 (articles 964 and 965 of the CGI).

Despite France ranking in the OECD tax-to-GDP ratio and its perception of being a highly taxed country, the French League 1 was able to attract renowned football players like Neymar Jr. (PSG), Memphis Depay (Lyon) and Radamel Falcao (Monaco⁷⁷). It is assumed that these players use the availability of the French Expatriate Income Tax Regime⁷⁸.

Designed to attract foreign executives, the expatriate tax regime applies to taxpayers who were not resident of France prior to taking up a role in the country⁷⁹. More precisely, employees and managers who were not residents of France for tax purposes during the five calendar years prior to their taking up of their duties in a company based in France can apply this regime. Their recruitment can result from an intra-group transfer, or from an external hire, i.e. directly recruited abroad for a position in a company in France. To be eligible for this regime, the employee must have their household or principal place of residence in France, in addition to a primary occupation in France. The regime allows for the following tax reductions:

- The special expatriate tax regime provides income tax exemptions for eight years on expatriate bonus⁸⁰ and the share of compensation relating to the foreign activity carried out in the interests of the employer. Moreover, the bonus may be assessed at a 30% flat-rate of total remuneration in case the contract does not fix it.
- These tax advantages are capped at the taxpayer's discretion: it can be an overall cap, which means that benefits of the expatriation bonus and foreign activity exemption, may not exceed 50% of the total remuneration, or a cap solely on the exemption corresponding to the assignment carried out abroad, which may not exceed 20% of the taxable remuneration net of the expatriate bonus.
- This exemption for active income is correlatively accompanied by a tax exemption for passive income such as interest and dividends⁸¹. Indeed, taxpayers falling within the personal and temporal scope of the special expatriate tax regime can benefit from a 50% tax exemption for passive income from foreign sources, such as income from investments, intellectual property rights (see hereafter) or capital gains on securities.
- In addition to this favourable income tax regime, there is also a favourable wealth tax regime for new French tax residents. Indeed, the Article 964 of the French Tax Code (FTC) provides, that for five years, these French tax residents are liable to property wealth tax (*Impôt sur la Fortune Immobilière*) only on property and property rights located in France, thus avoiding the global territorial scope of this taxation.

⁷⁷ Monaco being a case on its own, in view of its particular status: <https://www.linklaters.com/en/insights/blogs/sportinglinks/2020/april/an-outsider-in-its-own-league-as-monaco-covid-19-crisis>.

⁷⁸ See <https://cms.law/en/fra/publication/taxation-of-foreign-professional-football-players-france-takes-the-offensive>.

⁷⁹ The regime is often referred to under different names, such as the Impatriate or Inpatriate regime. We will hereafter refer to Expatriate Income tax Regime. More information can be found here: <https://www.impots.gouv.fr/portail/internationalenindividual/special-expatriate-tax-regime>.

⁸⁰ Article 155B of the FTC provides a safeguard clause, according to which the employees shall be taxed in France on an amount at least equivalent to the remuneration earned in the same company by a non-expatriate employee. Therefore, the expatriate bonus can be limited with respect to this reference remuneration.

⁸¹ This tax exemption for passive income can apply even where the taxpayer does not earn in France any active income. This has recently been reiterated by the French Administrative Supreme Court (Conseil d'État, 21-10-2020, n°442799). The French Tax Authorities subordinated, in their guidelines, the benefit of the tax exemption of passive income to the effective and actual receipt of activity income, thus creating an additional condition not provided for by law, which was annulled by the French Administrative Supreme Court.

It is questioned in French legal doctrine whether the regime is in breach with the EU rules on State aid, enshrined in Articles 107 and 108 of the Treaty on the Functioning of the European Union (TFEU)⁸².

It is stated that the application of the expatriate income tax regime to football players allows for a significant decrease in the French tax burden. The extent of the saving is substantial especially when it comes to high earners. That is the reason why it remains a constant concern of clubs who are keen on remaining competitive with fellow European clubs and able to hire the very best players⁸³.

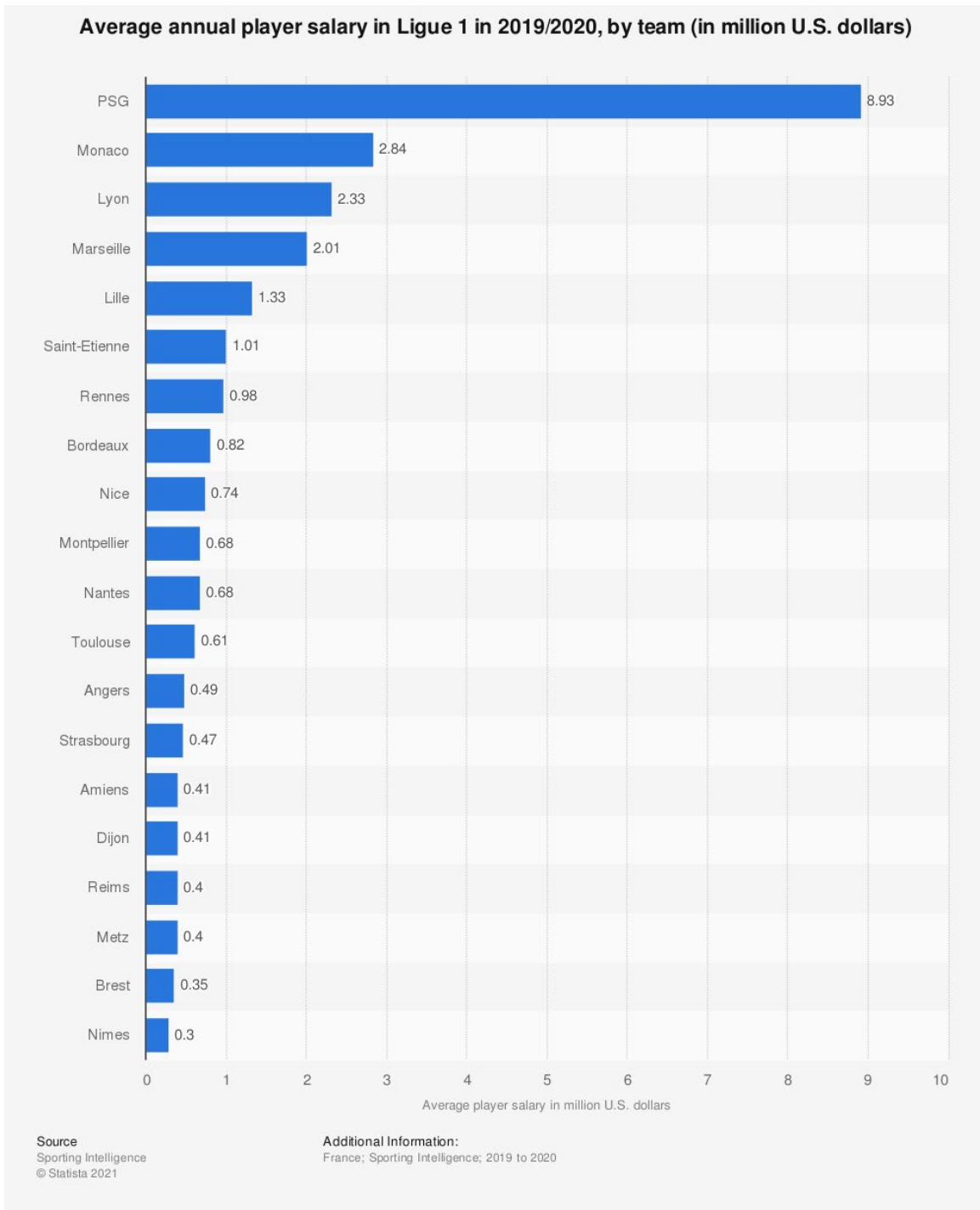
Next to the expatriate income tax regime, reference should also be made to the income smoothing mechanism as foreseen in articles 100bis and 84 A of the French Tax Code. This mechanism consists in reducing the progressivity of income tax on significant gains. French tax resident sportsmen may opt, under certain conditions, for a smoothing of their income and expenses over a period of three or five years. This mechanism may be quite helpful in case of players receiving a signing bonus or, for instance, when there are great variations of the income of the players. In general, the idea is that the players will be taxed based on an income equal to the average of the profits of the tax year and of the two previous years (if the three years option is selected) or the average of the profits of the tax year and of the four previous years (if the five years option is selected).

⁸² See <https://www.internationaltaxreview.com/article/b1r0bshk97wpw9/france-special-expatriate-tax-regime-a-breath-of-fiscal-oxygen-under-control>.

⁸³ See <https://cms.law/en/fra/publication/taxation-of-foreign-professional-football-players-france-takes-the-offensive>.

2.3.3. Overview of average player salaries in the French Ligue 1

Figure 2: Overview of average player salaries in the French Ligue 1



Source: see <https://www.statista.com/statistics/675528/average-ligue-1-salary-by-team/>.

2.3.4. Recent developments

Like in other countries, image rights represent an important part of the income of professional football players based in France. Football players of major French clubs also use image rights management companies to avoid being taxed under income tax on the income generated by the exploitation of these rights. Article 155A of the French Income Tax code serves as a reaction to schemes where intellectual property rights are (tax beneficially) held abroad, but control over the assets is held by

French tax residents. This provision introduces a look-through regime as a result of which these players will remain taxable on the income attributed to the management company.

France recently enacted legislation in relation to image rights. Article 17 of Law 2017-261, so-called *Loi Braillard*, of 1 March 2017 introduced article L.222-2-10-1 of the French Sports Code, which provides that clubs “may conclude a contract with an athlete or professional trainer whom it employs for the commercial exploitation of his or her image, name or voice”. The stated objective of the reform which applies to all professional sportsmen/women across all sports, is to improve the competitiveness of French professional sport by reducing the social charges that constrain French clubs. Payments for the use of image rights, will therefor – if certain conditions are followed - no longer be seen as taxable salary and be free of social security contributions for the clubs paying the image rights⁸⁴.

Upon finalization of this study, French football club Paris Saint-Germain signed the Argentinian soccer player Lionel Messi. The authors of the present report were not able to verify whether Lionel Messi will apply the French expatriate income tax regime during his stay in France. However, it is noteworthy that the French football club Paris Saint-Germain opted to pay a ‘significant part’ of the Lionel Messi’s signing bonus in its own cryptocurrency, ‘PSG Fan Tokens’. These Fan Tokens constitute a form of cryptocurrency which fans of the club are able to buy and, apart from their (fluctuating) monetary value as a cryptocurrency, possession of these Fan Tokens allows fans to be involved in minor club decisions, such as the design of the curtain in the player’s tunnel or the colour of the team captain’s armband. Interestingly, it was reported that the value of the PSG Fan Token rose 130% in a few days, when news came out that Lionel Messi would be signed by PSG⁸⁵. This constitutes one of the first high profile cases where a professional football player is in part remunerated in cryptocurrency.

2.4. Italy

KEY FINDINGS

- The Italian legislator significantly changed the tax regimes (potentially) applicable to football players over the few years. Most measures are designed in a way that foreign football players will benefit from them upon relocation to Italy.
- The Italian resident non-dom regime will mainly benefit the football superstars, who in addition to regular salary income, also enjoy non-Italian sourced income (income linked to their career such as endorsement income or royalty income, as well as to capital income).
- The (more recent) Italian expatriate income tax regime allows football players to enjoy a 50% reduction on their taxable base and therefor entails a significant benefit for the taxation of regular employment income.

2.4.1. Introduction

Italy ranked 5th out of 37 OECD countries in terms of the tax-to-GDP ratio in 2019. In 2019, Italy had a tax-to-GDP ratio of 42.4% compared with the OECD average of 33.8%. Relative to the OECD average,

⁸⁴ See <https://www.legifrance.gouv.fr/download/pdf/circ?id=44792>.

⁸⁵ See <https://www.bbc.com/news/world-58094912>.

the tax structure in Italy is characterised by higher revenues from taxes on personal income, profits and gains as well as social security contributions⁸⁶.

Italy ranks 3th in the UEFA association club coefficient ranking 2020/21. For purposes of this study, Italy is considered to host a top competition.

2.4.2. The tax framework for football players

Italian income tax applies to both resident as non-resident individuals. Resident individuals are in principle taxed on their worldwide income, and a credit is provided for taxes paid abroad. Non-residents are taxed only on income that is deemed to be arising in Italy (article 3(1) of the *Testo Unico delle Imposte sui Redditi*, hereafter TUIR). Individuals will typically be subject to the Italian *imposta sul reddito delle persone fisiche* (IRPEF), which is a progressive tax that applies to the aggregate total income of the taxpayer. Some individuals are subject to the regional production tax, or so-called *Imposta Regionale sulle Attività Produttive* (IRAP), which is different from IRPEF in the sense that it is a tax levied at a flat rate on the adjusted income from professional and business activities⁸⁷.

Favourable specific rules may apply to qualifying high net worth individuals (hereafter referred to as the Italian resident non-dom regime⁸⁸), inward expatriates and individuals earning foreign pension income who become new residents in Italy. Both the Italian resident non-dom regime and the inward expatriates' regime are said to highly influence the tax attractiveness of Italy for football players and sportspersons in general.

Individuals resident in Italy are subject to IRPEF on their aggregate worldwide income. Residents of Italy are those persons, whether nationals or not, who for the greater part of the tax year are registered in the Civil Registry of the Resident Population or who are resident or domiciled in Italy pursuant to article 43 of the Civil Code (*Codice Civile*, C.C.)⁸⁹. The Civil Registry of the Resident Population criterion relies on a formal condition, i.e. registration in this register for at least 183 days in a given tax period. Under article 43 of the C.C., the residence of a person is the place where he has his habitual abode, while his domicile is the place where he has established the principal centre of his business and interests (centre of vital interests). Italy has specific rules in place for taxpayers (Italian nationals) who have removed themselves from the Civil Registry of the Resident Population, with a view on moving to blacklisted jurisdictions.

With ruling no. 29095 of October 2020⁹⁰, the Court of Cassation declared an appeal filed by the football player Mirko Vučinić inadmissible. This appeal dealt with a tax residency case. The Court denied the player the loss of his tax residence in Italy despite being registered for a Middle Eastern team.

The judges analysed the case and found substantial factors that linked the player to the Italian territory notwithstanding his transfer (payment of contributions for domestic workers, children attending schools, current financial relationships, ownership of cars and motorcycles, ownership of real estate and utilities in Italy, real estate contracts, etc.). As a result of this judgment, Vučinić, although registered with and playing for a foreign club, was considered to have remained a taxpayer fiscally resident in

⁸⁶ See <https://www.oecd.org/tax/revenue-statistics-italy.pdf>.

⁸⁷ IRAP applies to entrepreneurs, professionals or artists. Football players, who have an employed status, do not qualify for this regime with regard to employment activities.

⁸⁸ Although not entirely comparable to the resident non-dom regime applicable in the UK, it is often said that the Italian regime is inspired by the UK-variant: G. BERETTA, "From worldwide to Territorial Taxation: is Italy Now an Attractive Destination for Migrating Individuals", *Bulletin for International Taxation*, August 2017, 437-443. For the UK remittance basis system, see D.S. ROXBURGH, Domicile and the Remittance Basis in UK Taxation, 46 Eur. Taxn. 10 (2006), *Journals IBFD*.

⁸⁹ See www.ibfd.org.

⁹⁰ See <https://www.giurisprudenzapenale.com/wp-content/uploads/2020/11/Cass-29095-20.pdf>.

Italy. This conclusion seems logical in the light of Italy attaching importance to the criterion of the centre of vital interests.

IRPEF is levied on personal income, whether in money or in kind, falling under any of the following categories (articles 1 and 6 of the TUIR):

- income from land and buildings (*redditi fondiari*);
- income from investment (*redditi di capitale*);
- income from employment (*redditi di lavoro dipendente*)^{91,92};
- income from self-employment (*redditi di lavoro autonomo*);
- business income (*redditi di impresa*); and
- miscellaneous income, including capital gains (*redditi diversi*).

The above list is exhaustive, which means that if an item of income is not expressly mentioned in one of the chapters, it is not subject to IRPEF. The following progressive individual income tax rates have been applicable since 2007 (article 11 of the TUIR):

Table 4: Income tax rates Italy

Taxable income per <i>share</i> (EUR)		Rate (%)
Up to	15,000	23
15,001	28,000	27
28,001	55,000	38
55,001	75,000	41
Over	75,000	43

Source: authors.

The above progressive rates are increased by a regional surcharge (*addizionale regionale*) ranging from 1.23% to 3.33%. The rates may also be increased by municipal surcharges (*addizionale comunale*) up to 0.9%.

Certain items of income can be subject to separate taxation, i.e. they can be excluded from the aggregate income and taxed separately at a particular tax rate.

This is amongst others the case for indemnities received by professional sportsmen at the end of their sporting careers. The tax on income subject to separate taxation is generally calculated by applying the rate applicable to half the aggregate net income of the taxpayer during the 5-year period prior to that in which the right to receive such income arose. If there was no taxable income in any of the 5 prior years, such years are not considered. If there was no taxable income in either year the rate provided for the lowest bracket applies (article 21 of the TUIR).

⁹¹ Under Law 91/1981, professional sportspersons are deemed to perform their services under an employment relationship and usually qualified as employees.

⁹² Employment income also includes income derived from the disposal of image rights if such rights are assigned by the sportsperson or the artist in favour of the employer. Football players (which are regarded as employees) may assign their image rights to the club for which they play (either disposing or granting the licence to use the image rights), in which case any remuneration received upon such assignment (either fixed or contingent) is regarded as employment income, whether or not connected to a specific sport performance. It is less certain how image rights income is to be treated out of the context where the rights are assigned in favour of the employer, see M. TENORE, "Chapter 19: Italy in Taxation of Entertainers and Sportspersons Performing Abroad", in G. MAISTO (ed.), IBFD 2016, *Online Books IBFD*, 4, available on www.ibfd.org.

The taxation of income of professional sportsmen is in principle subject to these ordinary rules. Italy has however seen important tax changes which impact the tax treatment of football players and allows for a separate tax regime. Qualifying professional sports persons, including football players, who transfer their tax residence to Italy can indeed benefit from a favourable tax regime. On the one hand, Italy introduced a tax regime for high-net-worth individuals (hereafter referred to as the Italian resident non-dom regime) and otherwise a more generally applicable tax regime for inward expatriates (hereafter referred to as the Italian expatriates tax regime).

a. The Italian resident non-dom regime

The Italian tax system recently received quite a lot of attention after Portuguese football star Cristiano Ronaldo's transfer to Juventus in 2018. Cristiano Ronaldo chose to leave Spain and moved to Italy amid (unconfirmed) speculation that Spanish tax penalties were a motive for this move. Ronaldo was found to be using offshore entities to administer earnings from image rights and was fined for tax evasion in Spain⁹³. Just before Ronaldo's move to Italy, Italy introduced a new law intended to encourage individuals to move to Italy⁹⁴ entailing a resident non-domicile tax regime (known as 'regime dei neo-residenti'). The regime is available to taxpayers of any nationality who transfer their residence to Italy from abroad and who have been resident abroad for at least nine tax periods in the ten-year period preceding the acquisition of Italian residence. The regime does not require a minimum number of days of presence of the taxpayer on Italian territory. Income from foreign sources is subject on a yearly basis to a fixed substitute tax of EUR 100,000 that applies in lieu of IRPEF and related surcharges (reduced to EUR 25,000 if the option is extended to the taxpayer's family members). With respect to assets held abroad, the regime also provides significant advantages, namely the exemption from IVIE and IVAFE and from the tax reporting obligations. Finally, for assets held abroad the regime also entails an exemption from inheritance and gift tax.

This measure aimed to attract high net worth individuals in general and is thus not specially targeting football players. To our knowledge, it has not been explicitly confirmed by the Italian Tax authorities or the football players entourage that Ronaldo benefits from the flat tax regime, although he is often associated with it⁹⁵.

The nominal amount of this flat fee is rather high but can turn out to be beneficial in comparison to the normally applicable taxes on income of high-earning football players (with a consistent wealth located outside of Italy).

To efficiently apply the regime, it will remain important to analyse the different kinds of income generated by athletes⁹⁶. Endorsement income or image rights income received in connection with the obligation to wear specific sportswear in games outside of Italy should be included in the scope of lump sum payment. It is arguable if endorsement income or image rights income not received in connection with a sport performance would instead be covered. In such cases, in the absence of guidance or clarifications issued by the Italian tax authorities, the source of the income should be

⁹³ In addition to back tax and penalties, Ronaldo and other soccer players even faced incarceration, but it is not expected players would effectively serve time in prison for these offences. In Spain, first-time offenders who are sentenced to less than two years can serve the time under probation.

⁹⁴ Articles 24-bis and 24-ter of the Italian Income Tax Consolidation Act (ITCA), introduced by Budget Law 2017 (Law No. 232 of 11 Dec. 2016) and Budget Law 2019 (Law No. 145 of 30 Dec. 2018). For a detailed description of this regime: G. BERETTA, "From worldwide to Territorial Taxation: is Italy Now an Attractive Destination for Migrating Individuals", *Bulletin for International Taxation*, August 2017, 437.

⁹⁵ X. "A flat-tax scheme is luring the wealthy to Italy", *The Economist*: <https://www.economist.com/europe/2020/10/29/a-flat-tax-scheme-is-luring-the-wealthy-to-italy>.

⁹⁶ A. TAVECCHIO, M. CALDARA and R. BARONE have analysed the regime in the light of typical income received by athletes, such as image rights: A. TAVECCHIO, M. CALDARA and R. BARONE, "The Cristiano Ronaldo Transfer to Juventus: The New Italian Resident Regime Benefits Athletes from Around the World", *ITSG Global Tax Journal*, October 2018, 11-16.

determined based on the residence of the payer. The flat tax regime could even be beneficial in relation to income obtained through foreign disregarded companies⁹⁷.

The application of the regime is rather simple, in the sense that no peculiar qualifications are imposed on the taxpayer willing to apply the regime⁹⁸. Taxpayers may access the regime by submitting an advance tax ruling to the Italian Revenue Agency or by exercising the option for substitute taxation in their tax return. It is basically sufficient that the taxpayers were consecutive Italian non-residents prior to their transfer of residence to Italy and is willing to pay the flat fee. This regime cannot be combined with other Italian regimes allowing for tax incentives, such as the hereafter described expatriate income tax regime.

The regime has a non-renewable maximum duration of fifteen tax periods from the first year of tax residency. In the event of revocation or withdrawn in advance of the termination, the taxpayer is precluded from exercising a second option in order to fall in the scope of the favorable regime a second time.

b. The Italian expatriates tax regime

Where the Italian 'non-dom regime' mainly provides for tax incentives in relation to income received outside Italy by (new) Italian tax residents, Italy also grants incentives that favourably treat Italian-sourced income held by individuals transferring their tax residence to Italy in order to carry out a work activity in the country ('expat workers' or 'impatriates', hereafter generally referred to as expatriates). Italy enacted these rules in 2010 (for professors and researchers) and 2015 (for 'workers' and entrepreneurs⁹⁹), with a view on granting a tax exemption to these workers in the form of a reduction of their taxable base.

The relevant benefits apply to individuals¹⁰⁰ (i) who transfer their tax residence to Italy and commit to remain in Italy for at least 2 years, (ii) who were not Italian residents in the 2 years preceding the transfer and (iii) who are mainly working in the Italian territory. A 70%¹⁰¹ exemption applies to their employment, self-employment or business income (provided that relevant business income is derived from newly established enterprises carried on in Italy). The regime can be extended for a further five tax periods if one of the following alternative conditions is met, i.e., the employee has a minor or dependent child, including a pre-adoptive foster child; or the employee has become the owner of at least one residential property in Italy (including in the 12 months preceding the transfer).

The regime was slightly modified in 2019 by Law Decree No. 34 of April 30, 2019 (entry into force on May 1, 2019, applicable to taxpayers transferring their tax residence to Italy starting from 2020). One of the main differences introduced by the said Law Decree is that employees and self-employed professionals could qualify for the expat tax regime, regardless of their qualifications (i.e. no specific scholar degree, masters, or similar are required) or role. In connection hereto, the decree clarified that professional athletes¹⁰² can qualify as expatriate under the regime to the extent that they qualify under

⁹⁷ A. TAVECCHIO, M. CALDARA and R. BARONE have analysed the regime in the light of typical income received by athletes, such as image rights: A. TAVECCHIO, M. CALDARA and R. BARONE, "The Cristiano Ronaldo Transfer to Juventus: The New Italian Resident Regime Benefits Athletes from Around the World", *ITSG Global Tax Journal*, October 2018, 16.

⁹⁸ "Tax incentives for attracting human capital in Italy - pdf", <https://www.agenziaentrate.gov.it/portale/documents/20143/233483/Tax+incentives+for+attracting+human+capital+in+Italy+Tax+incentives+for+attracting+human+capital+in+Italy.pdf/f4a91a80-8ed0-92a5-0186-424a9013bfc3>.

⁹⁹ Article 16 of Legislative Decree No. 147 of 14 September 2015.

¹⁰⁰ See www.ibfd.org.

¹⁰¹ The exemption is increased to 90% if the individual transfers his residence to certain regions in the south of Italy (i.e. Abruzzo, Basilicata, Calabria, Campania, Molise, Puglia, Sardinia and Sicily).

¹⁰² The qualification as professional or amateur sportsman depends on Law n° 91/1981 (Law on Professional Athletes) and not on the actual circumstances of the athlete. Serie A football players will qualify as professional football player.

the general conditions (higher described engagement to remain tax resident of Italy for 2 years and mainly performing activities in Italy). If so, the athletes will enjoy a 50% reduction instead of 70% reduction on their taxable income¹⁰³. The regime applies for five tax periods with no possibility of extension.

Athletes will however be required to pay a proportional levy equal to 0,5% of the taxable income if they want to apply this regime. The proceeds of this tax will be used to provide support to younger athletes in the sports sector. Non or insufficient payment of the contribution within the deadline will result in forfeiture of the benefits of the 'inbound employees' regime.

The benefits of the expatriate income tax regime are withdrawn in case the taxpayer does not maintain his/her residence in Italy for at least two tax periods. In order to benefit from the benefits provided for by the expatriate income tax regime, the taxpayer may submit to his/her employer (or principal) a declaration in which, inter alia, he declares to meet the requirements for the benefits of the relief. The employer (or the principal), acting as withholding agent, shall withhold the taxes on the reduced taxable base. The benefit can also be taken at the end-of-year adjustment or in the tax return.

Political parties have raised the concern that the Italian expatriate income regime might be in breach of EU-law and more specifically, the prohibition on illegal fiscal State aid. The European Commissioner for Competition, Ms. Vestager, replied to these concerns by stating that the Commission did not receive advance notifications of the Italian decree Decreto Crescita. Pursuant to Article 108, paragraph 3, of the Treaty on the Functioning of the European Union, it is the responsibility of the Member States to notify measures they consider may entail State aid. However, based on available public information, the expatriate income tax regime appears to:

- concern personal income tax, not corporate income tax;
- seems to apply to all inward expatriates working in any sector; and
- to set a stricter limit to the exemption for persons employed in professional sports (50% of income) compared to other inward expatriates (70%).

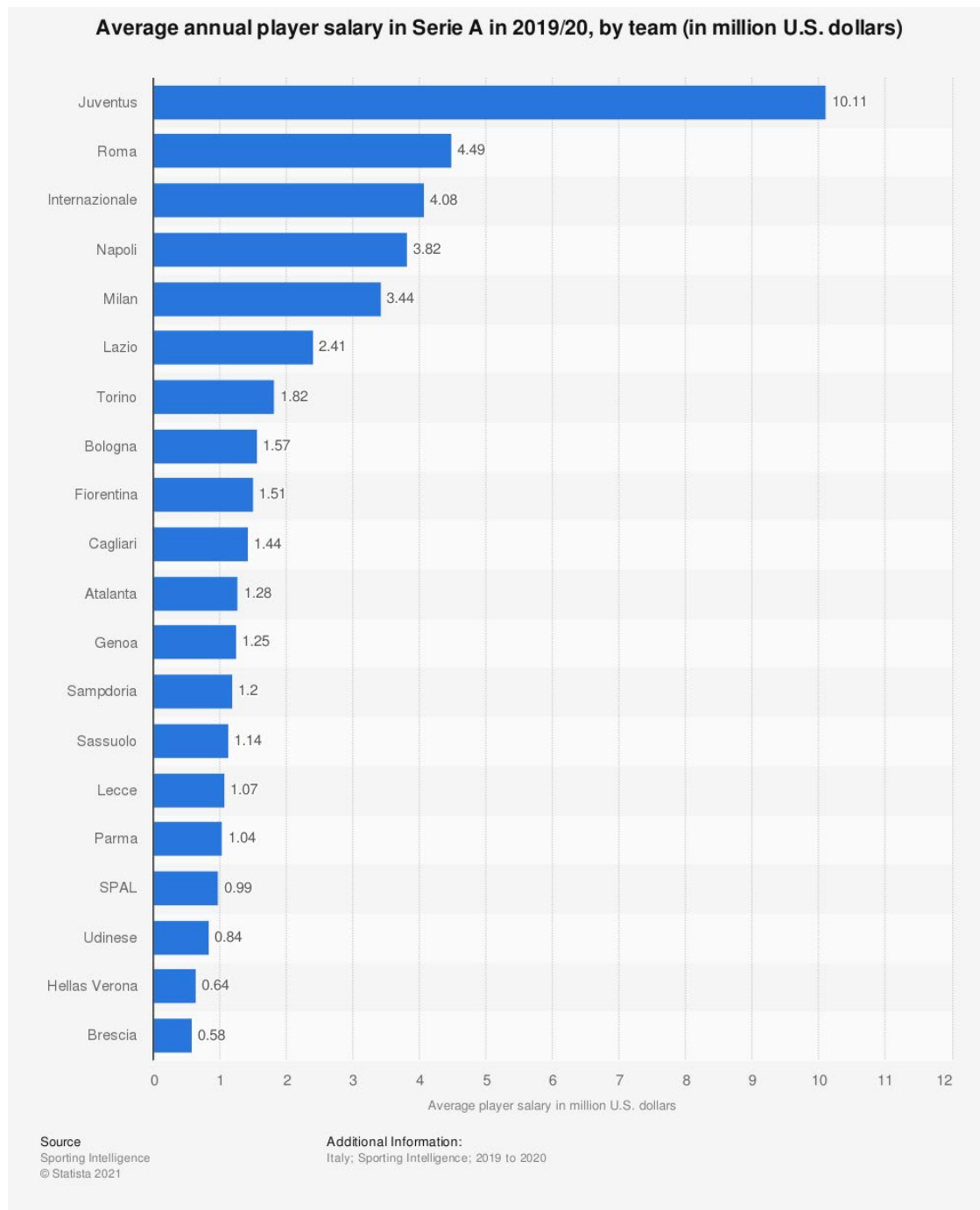
Based on this limited information, the measure does not seem to raise State aid issues, according to the Commissioner¹⁰⁴.

¹⁰³ The 90% exemption for transferring the tax residence to one of the southern Italian regions shall not be applicable.

¹⁰⁴ See https://www.europarl.europa.eu/doceo/document/E-9-2019-002224-ASW_EN.pdf.

2.4.3. Overview of average player salaries in the Italian Serie A

Figure 3: Overview of average player salaries in the Italian Serie A



Source: see <https://www.statista.com/statistics/675470/average-serie-a-salary-by-team/>.

2.4.4. Recent events

- Prior to 1 January 2016, article 51(4-bis)¹⁰⁵ of the Italian Income Tax Code (ITC) introduced a special fringe benefit for professional sportspersons (with effect as from 1 January 2013), which was in fact meant to apply mainly to professional soccer players¹⁰⁶. According to this provision, the sportsperson was subject to tax upon a portion of the agent's fee which is paid by the club that acquires the sporting performances of the athlete. The deemed income was computed in the amount of 15% of the agent's fee net of the fees that the sportsperson paid to his own agent (if any). The design of this rule raised doubts as to whether the provision violated the ability-to-pay principle set out in article 53 of the Italian Constitution. Amongst others for this reason, the provision has been recently eliminated by article 1(8) of Law 208 of 28 December 2015 (Budget Law 2016) with effect as from 1 January 2016.
- The Italian Revenue Agency recently issued Ruling No. 139/2021, which clarifies the tax treatment of payments made by an Italian resident movie production company to a Spanish tax resident movie actress as remuneration for the alienation of the exclusive right to exploit worldwide the image rights connected to the role of interpreter and executor of a movie. The movie will be entirely produced in Italy. Under the agreement, the actress's remuneration was split into two components: 60% for the professional artistic performance as main actress of the Movie and 40% for the alienation of the image rights. The Italian resident company requested the Italian Revenue Agency to confirm whether the consideration for the alienation of the Image Rights fell into the definition of royalties under Article 12(2)(a) of the 1977 Italy-Spain tax treaty. In this case, the Italian Revenue Agency characterised the remuneration for the alienation of the image rights as income from self-employment under Italian domestic tax law since the image rights belong to an individual performing as professional actress on a habitual basis (see also Ruling No. 255/2009). Therefore, because the entire performance will take place in Italy, the whole actress's remuneration is deemed to be sourced in Italy.
- Albeit not entirely comparable with a domestic case, this ruling might also have an impact for football players benefiting either from the Italian resident non-dom regime or the expatriates income tax regime. Seeing that non-Italian sourced income is normally not dealt with separately in the Italian resident non-dom regime, a big focus in practice will lie on the correct qualification of income. If the Italian tax authorities would increase the scope of income deemed to be of Italian source, this would reduce the benefits of the Italian non-dom regime.

¹⁰⁵ Article 51 (4-bis) of the ITC applied to the extent the agent was involved in the negotiation of the sport performance. This was the case, for example, if the agent's scope of activities dealt with the resolution or the extension/renewal of the existing contract between the athlete and the club. On the contrary, the provision did not apply if the activity of the agent regards other matters, such as the exploitation of image rights.

¹⁰⁶ M. TENORE, "Chapter 19: Italy in Taxation of Entertainers and Sportspersons Performing Abroad", in G. MAISTO (ed.), *IBFD 2016, Online Books IBFD* (accessed 26 1 August 2016), available on www.ibfd.org.

2.5. Portugal

KEY FINDINGS

- The Portuguese non habitual tax resident status was introduced in 2009 following the outbreak of the financial-economic crisis. It served well and led to an influx of capital rich pensioners who enjoyed the benefits of the regime until 2020.
- The non-habitual tax resident status is available for (professional) artists, who enjoy a favorable 20% tax rate of professional income as well as tax incentives for other income obtained abroad.
- The non-habitual tax resident status is not available for professional football players. Certain authors regret that this is not the case.

2.5.1. Introduction

Portugal ranked 18th out of 37 OECD countries in terms of the tax-to-GDP ratio in 2019. In 2019, Portugal had a tax-to-GDP ratio of 34.8% compared with the OECD average of 33.8%.

Relative to the OECD average, the tax structure in Portugal is characterised by higher revenues from social security contributions; value-added taxes; and goods & services taxes (excluding VAT/GST)¹⁰⁷.

Portugal ranks 6th in the UEFA association club coefficient ranking 2020/21. For purposes of this study, Portugal is considered to host a sub top competition.

2.5.2. The tax framework for football players

Under the CIRS (*Código de Imposto sobre o Rendimentos das Pessoas Singulares*, CIRS), residents are taxed on their worldwide income, i.e. on their entire income, wherever it is earned and irrespective of where the payer is resident (article 15(1) of the CIRS).

An individual is deemed to be a resident of Portugal if (article 16(1) of the CIRS) he or she remains present there for more than 183 days in any 12-month period commencing or ending in the calendar year concerned or if he or she visits Portugal for a shorter period in any year and has a place of abode available there and, from the circumstances, it can be inferred that it is his intention to keep and occupy such abode as his permanent residence. Individuals of Portuguese nationality who become resident for tax purposes in a territory or country with a more favourable tax regime, will be Portuguese tax residents in that year and also the following 4 years, unless they can prove that their tax residence in the other country is justified because they are, for example, carrying out a temporary activity for a Portuguese entity (article 16(5) of the CIRS).

The Portuguese Ministry of Finance has listed the countries and territories considered to have favourable tax regimes. Countries listed as having a favourable tax regime include the following: Antigua and Barbuda, Aruba, the Bahamas, Barbados, Bermuda, the Cayman Islands, the Channel Islands (Alderney, Brechou, Greater Sark, Guernsey, Herm, Jethou, Lihou and Little Sark), the Cocos Islands and Keeling, the Cook Islands, Gibraltar, Hong Kong, Kuwait, Liechtenstein, Monaco, the Netherlands Antilles, Panama, Puerto Rico, the Seychelles, and Trinidad and Tobago.

¹⁰⁷ See <https://www.oecd.org/tax/revenue-statistics-portugal.pdf>.

Taxable income is the total of the net results of each of the taxpayer's income categories. The income (rendimento) is divided into six categories (article 1(1) of the CIRS), namely:

- A: employment income;
- B: business and professional income;
- E: investment income;
- F: real estate income;
- G: capital gains; and
- H: pensions.

The table below applies in respect of income Categories A to H, except when income is subject to a final withholding (article 71 of the CIRS) and autonomous taxation/special rates (article 73 of the CIRS).

Table 5: Income tax rates Portugal (IRS table for the year 2021 (article 68(1) of the CIRS))

Taxable income bracket (EUR)			Marginal rate on excess over lower limit (%)	Average rate on lower limit
Up to		7,112	14.5	14.5
7,112	-	10,732	23	17.367
10,732	-	20,322	28.50	22.621
20,322	-	25,075	35	24.967
25,075	-	36,967	37	28.838
36,967	-	80,882	45	37.613
Over		80,882	48	

Source: authors.

In addition, a surtax named *taxa de solidaridade* ("solidarity tax") of 2.5% applies to all aggregated categories of taxable income exceeding EUR 80,000. On the part of the income exceeding EUR 250,000, a 5% rate applies (article 68-A of the CIRS).

a. The non-habitual tax resident regime

In the aftermath of the worldwide financial crisis in 2008, Portugal suffered from the economic downturn which led to an overall loss of purchasing power and brain-drain. The effects of this migration were felt not only at the level of highly qualified employees but also in the artistic field and the ability to retain and acquire particularly skilled sportspersons in Portugal¹⁰⁸.

To remedy this, a special regime has been established in Portugal for the beneficial tax treatment of persons becoming resident in Portugal for the first time in 2009 or in subsequent years. Under this regime, which is often referred to as the Non-Habitual Resident (NHR) regime, employment and self-employment income derived from "*high-value-adding activities of scientific, artistic or technical nature*" that is earned by non-habitual residents in Portugal will be taxed at a 20% rate. It is thereby to be

¹⁰⁸ S. CABRITA NETO, D. TRACANA and J. RODRIGUES, "Taxation of artists and sportspersons in Portugal", *Sports Law & Taxation*, Nolot, 52 – 56.

specified that the non-habitual residents do qualify as Portuguese tax resident¹⁰⁹. The 'non-habitual' element is rather to be seen in the context of relocation. Indeed, the benefits of the regime can only be enjoyed if the taxpayer requesting the application was not considered as a resident, for tax purposes, in Portuguese territory in any of the 5 years prior to the year in which he intends to be registered as resident taxpayer.

By way of example, the following classes of activities are defined as high-value-adding activities¹¹⁰:

- architects, engineers and similar technicians;
- fine artists, actors and musicians;
- authors and journalists;
- doctors and dentists;
- College and university professors;
- liberal professions, technicians and similar; and
- investors, directors and managers.

The net income of categories A (employment income) and B (business and professional income) obtained in high-value-adding activities, of scientific, artistic or technical nature, by non-habitual residents in Portuguese territory, shall be taxed at the special rate of 20%. As regards the remaining income in categories A and B (not high value adding) and income from the other categories, accrued by non-habitual residents, they are taxed in accordance with the general rules established in the CIRS. The non-habitual residents are also subject to the solidarity tax.

Additionally, the regime establishes (i) a tax exemption for foreign-source employment income, provided that the income is effectively taxed and (ii) further exemptions to self-employment income, rental income, interest, dividends as well as other investment income, and capital gains, in this case provided the income could have been taxed in the state of source, under an existing tax treaty or, in the event of lack of an existing tax treaty, and provided the state or source is not a blacklisted jurisdiction, such income could have been taxed in the state of source in accordance with the OECD model tax convention¹¹¹.

In order to opt for the application of the regime, the taxpayer should indicate in the personal income tax return the carrying on of a high-value-adding activity (Circular 4/2019 of 8 October 2019). The verification by the tax authorities of whether the activity is high value adding occurs a posteriori, after the submission of the tax return.

The regime is applicable for a period of 10 consecutive years (article 16 (7) of the CIRS). Within the 10-year period, the individual may give up Portuguese tax residence and subsequently recover the non-habitual residence status for the remaining years.

For the application of the regime, it will thus be crucial to assess whether activities qualify as high value-added activity or not.

¹⁰⁹ S. CABRITA NETO, D. TRACANA and J. RODRIGUES, "Taxation of artists and sportspersons in Portugal", *Sports Law & Taxation*, Nolot, 52.

¹¹⁰ Ministerial Order 12/2010, amended through Ministerial Order 230/2019.

¹¹¹ The exemption does not apply for pensions from foreign sources, and this income is subject to taxation at a rate of 10% (article 72(12) of the CIRS). This does not apply to pensions from foreign sources obtained by non-habitual residents who are already registered as such until a period of 10 consecutive years is completed, as well as taxpayers who request their registration as non-habitual residents until 31 March 2020 or 31 March 2021, for meeting the conditions in 2019 or 2020, respectively (article 329 of the Budget Law for 2020).

This assessment is made on the basis of Ministerial Order 12/2010, as amended. The flat rate of 20% therefore applies amongst others to income derived from activities of “*creative artists and performing arts*”. In this respect, the NHR regime has been effective. Reportedly, various celebrities such as John Malkovich, Monica Bellucci and Eric Cantona have moved to Portugal and have benefitted from the NHR-regime.

Activities of sportsmen thereby included football players, however, do not qualify under the NHR-regime. This is strongly regretted by Portuguese legal scholars, who see this as a missed opportunity in view of reinforcing Portugal’s competitiveness in the sports industry¹¹².

b. The “Return program”

Although not football industry-specific, Portugal did introduce other fiscal measures which could indirectly impact the fiscal situation for (some) professional football players.

Portugal introduced a so-called ‘return program’ in 2019, with the purpose of supporting emigrants, as well as their descendants and other relatives, to return to the Portuguese territory and to take advantage of opportunities available in Portugal. On the fiscal side, this entails a 50% income exemption on employment and self-employment income, applicable for a period of 5 years. This tax regime is only available to individuals who became Portuguese tax resident between 2019 and 2023¹¹³, have not been tax resident in the 3 years prior to their return to Portugal and were tax resident at some point in time prior to December, 31, 2015¹¹⁴. This regime cannot apply simultaneously with the NHR regime, and therefore a choice needs to be made.

2.5.3. Recent events

In Portugal also, image rights have been an item of discussion, although no real excesses have been reported. The Portuguese Tax Arbitration Court (Court) issued on 15 September 2016 a decision in which it, amongst other issues, addressed the taxation of image rights of football players¹¹⁵. The file specifically dealt with image rights payments by a Portuguese club to an Irish company in lieu for the use of image rights of a football player (soon to be) active in Portugal. The Court ruled in this matter, in view of the absence of active intervention by the football player in the commercialization and contract negotiation of the rights, that the income could not be qualified as employment income. Legal doctrine¹¹⁶ questions the validity of the Court’s assessment and states that many uncertainties in relation to the qualification of image rights income continue to exist, also after guidance given by the Portuguese tax authorities (already in 2011¹¹⁷).

Portugal, like other countries, has seen some of its clubs and professionals being accused of (tax) wrongdoing in a scandal nicknamed ‘Operation Off Side’. Operation ‘Off Side’ – referred to as the largest investigation in the history of Portugal’s tax department – swooped into action on March, 4, 2020 and led to the searching of several football clubs and the properties of high-profile agents and

¹¹² S. CABRITA NETO, D. TRACANA and J. RODRIGUES, “Taxation of artists and sportspersons in Portugal”, *Sports Law & Taxation*, Nolot, 53.

¹¹³ Pending approval of the Resolution of the Ministerial Council 120/2020.

¹¹⁴ Although the Return Program was not designed to specifically target artists or sportspeople, in practice, there have been cases where individuals with this profile have returned to Portugal and benefited from this regime. The football player Pepe, a Portuguese international, is said to have claimed the regime upon his return to Portugal after having represented Real Madrid (Spain) and Besiktas (Turkey).

¹¹⁵ Arbitration process number 108/2015-T.

¹¹⁶ See https://www.sportsandtaxation.com/2017/01/portugal-taxation-of-image-rights/#_ftn3.

¹¹⁷ Guidance no. 17/2011 by the Portuguese Tax Authority, which is focused exclusively on payments made in connection with image rights of resident professional football players.

players. The focus of 'Off Side' are suspicions of multi-million tax fraud and money-laundering via player transfer deals and 'other deals', including agents' commissions, since 2015¹¹⁸.

2.6. Spain

KEY FINDINGS

- The Spanish tax system received great attention upon the arrival of football player David Beckham at Real Madrid in 2003. The Spanish legislator at that time modified the tax regime, to allow for an expatriate tax regime with a favorable (flat) tax rate and benefits as (deemed) non-resident taxpayer. From a football perspective, this was likely a wise decision as the Spanish football indirectly benefitted from the influx of reputed football players. From a societal perspective, it seems that the regime triggered too much public outcry, and hence was reformed so that it no longer applies to football players since 2015.
- Image rights have been the object of severe scrutiny by the Spanish tax authorities in the last years.

2.6.1. Introduction

Spain ranked 20th out of 37 OECD countries in terms of the tax-to-GDP ratio in 2019. In 2019, Spain had a tax-to-GDP ratio of 34.6% compared with the OECD average of 33.8%¹¹⁹.

Spain ranks 2nd in the UEFA association club coefficient ranking 2020/21.

2.6.2. The tax framework for football players

An individual who is a resident of Spain is liable to individual income tax (*Impuesto sobre la Renta de las Personas Físicas*, IRPF¹²⁰) in respect of his worldwide income and capital gains (article 9 of the LIRPF). An individual is a resident of Spain for tax purposes if:

- his stay in Spain exceeds 183 days (whether or not consecutively) in a calendar year; or;
- his main centre of business or professional activities or economic interests is in Spain (the burden of proof on this test rests with the tax authorities, not with the taxpayer).

Additionally, a presumption applies under which an individual is deemed to be a resident of Spain if his (non-legally separated) spouse and minor dependent children qualify as residents of Spain under (1) or (2) above (unless the taxpayer can prove – usually by means of a certificate of residence issued by the tax authorities of another country – that he is resident in another country).

Note that the calculation of the taxpayer's period of stay in Spain for more than 183 days takes into account not only the days of his physical stay in Spain, but also his temporary absences from Spain, unless the taxpayer can prove (ideally, but not only, by means of a certificate of tax residence) to the

¹¹⁸ See <https://www.theguardian.com/football/2020/mar/04/agent-jorge-mendes-homes-searched-in-money-laundering-investigation>.

¹¹⁹ See <https://www.oecd.org/tax/revenue-statistics-spain.pdf>.

¹²⁰ There are three levels of taxation in Spain, namely, by the central government, by the governments of the 17 autonomous communities and by the municipal governments. However, the taxes levied by the autonomous communities are relatively unimportant, except the corporate and individual income taxes levied in the Basque Country and Navarre. This survey focuses on the taxes levied by the central government and those taxes which are administered and collected by the municipalities.

tax authorities that he has maintained his habitual abode in another country for 183 days or more in that year (article 9 of the LIRPF).

In addition, Spanish nationals who move their residence to a country deemed to be a tax haven remain taxable on their worldwide income in the year of emigration and for the 4 subsequent years.

Income is taxed when effectively received. The concept of income (*renta*) encompasses income from six basic categories according to the source or origin, namely (article 6 of the LIRPF):

- employment income (*rendimientos del trabajo*);
- income from movable capital (*rendimientos del capital mobiliario*);
- income from immovable capital (*rendimientos del capital inmobiliario*);
- business income (*rendimientos de actividades económicas*);
- capital gains (*ganancias y pérdidas patrimoniales*); and
- imputed income (*imputaciones de renta que se establezcan por ley*).

Income is amongst others imputed in the case of the transfer of the right to a person's image. This provision is especially aimed at athletes paid through interposed companies, i.e. the sportsman has granted the right to his image to an entity (usually a foreign entity) with whom the sportsman has a dependent services contract. A typical optimization structure would be that the ultimate employer of the sportsmen pays part of his compensation as salary and another part to the entity owning the image rights (assumed non taxable, in the hypothesis that this would be a foreign company without Spanish tax liabilities). In this case, the athlete must also include the amount paid by the employer to the entity owning the image rights in his regular taxable base. The athlete can however deduct the compensation already received from the image rights company for the grant of this right, as long as, at the time of being compensated, the sportsman was a resident of Spain¹²¹.

From tax year 2021 onwards, the following progressive withholding tax rates¹²² are applicable (articles 63 and 74 of the LIRPF):

Table 6: Income tax rates Spain (table for the year 2021 (articles 63 and 74 of the LIRPF))

Taxable income (EUR)			Tax on lower amount (EUR)	Rate on excess (%)
Up to		12,450.00	0	19
12,450.01	-	20,200.00	2,365.50	24
20,200.01	-	35,200.00	4,225.50	30
35,200.01	-	60,000.00	8,725.50	37
60,000.01	-	300,000.00	17,901.50	45
Over		300,000.00	125.901,50	47

Source: authors.

¹²¹ This rule will not apply if the salary received by the sportsman in the same financial year is not less than 85% of the total amount of salary plus compensation for the transfer of image rights and the provision applies even if the entity owning the image rights is not a Spanish resident. In such cases, the law provides for the application of a tax credit in order to avoid double taxation (article 92 of the LIRPF).

¹²² Flat rates apply in relation to savings income (19-26%).

Before tax year 2021, the maximum rate was 45%. The ultimate income tax due will rely on two tax rates: (i) the state rate, and (ii) the regional rate. Therefore, the tax rates applicable are a combination of both the state and regional rates, which can get as an example up to a 50% in Catalonia.

a. Expatriate regime

Since 2004, foreign individuals moving to Spain and becoming Spanish tax residents may elect, provided that several requirements are met, to apply the 'expatriate tax regime' regulated in Article 93 of the Personal Income Tax (PIT) Law, as an alternative to the general tax regime applicable to tax residents¹²³. The regime is often referred to as the so-called 'Beckham-law', as it is claimed that it was introduced for the benefit of English football player David Beckham upon his relocation to Spain and signing for Real Madrid¹²⁴. In general, so-called skilled workers (researchers, scientists, executives...) apply the regime. When enacted in 2004, the Spanish legislator effectively aimed at establishing a tax regime to attract talented people to work in Spain, particularly top executives of multinationals who might then set up their regional headquarters in Spain and bring with them highly qualified employees as well. The regime also aimed to improve the Spanish economy in the long run, in a reasoning that the increase in economic activity would compensate for the tax cost of the measure.

The main consequence of the expatriate tax regime, which as such still applies today, is that qualifying individuals will only be subject to tax with regard to their Spanish source income. Employment income will however in principle remain fully taxable in Spain. According to the rules of income tax on non-residents, a flat 24% rate for the first EUR 600,000 and a 47% rate (45% before tax year 2021) for the excess will apply on this income for the tax year in which the taxpayer moves to Spain and for the following 5 tax years, with certain particularities (article 93 of the LIRPF)¹²⁵. The expatriate income tax regime is available to an individual if¹²⁶:

- he has not been resident in Spain at any time during the preceding 10 years; and
- he moves to Spain because of an employment contract¹²⁷.

This Spanish expatriate tax regime was amended with effect from January, 1, 2010 (despite pressure from the Spanish football lobby)¹²⁸. Following this amendment, employees expecting employment income of over EUR 600,000 per year were no longer able to apply the expatriate regime and they will instead be taxed under the general rules on personal income tax, at progressive rates (instead of the flat rates applied under the expatriate regime). The Spanish government has justified this amendment by stating that high earning taxpayers should not be allowed to benefit from lower taxation. La Liga in the meantime continues to lobby against tax increases, out of fear that the Spanish tax competition would be less competitive in comparison with other leagues¹²⁹.

Finally, as from January 1, 2015, the regime has been modified one more time and it is as of then impossible to apply the expatriate tax regime by professional athletes subject to Royal Decree

¹²³ CARREÑO, FLORENTINO, Spain: Spanish Impatriates Tax Regime. Trusts & Trustees; *Oxford* Vol. 23, Iss. 1, (Feb 2017): 20 - 22.

¹²⁴ A. MORENO and H. LOPEZ LOPEZ, "Brain drain tax vs. Brain Gain Benefits: General thoughts from a Spanish Perspective", *annals of the Faculty of Law in Belgrade*, <https://www.cceol.com/search/article-detail?id=848464>; A. APPLEBY, "Levelling the Playing Field: A separate tax regime for International Athletes", 36 *Brook. J. Int'l L.* 630, 2011.

¹²⁵ See www.ibfd.org.

¹²⁶ The regime can also apply to company directors, which is however less relevant for football players,

¹²⁷ Other than those falling within the scope of Royal Decree 1006/1985 (which governs the employment relationship between a sport professional and a sport club).

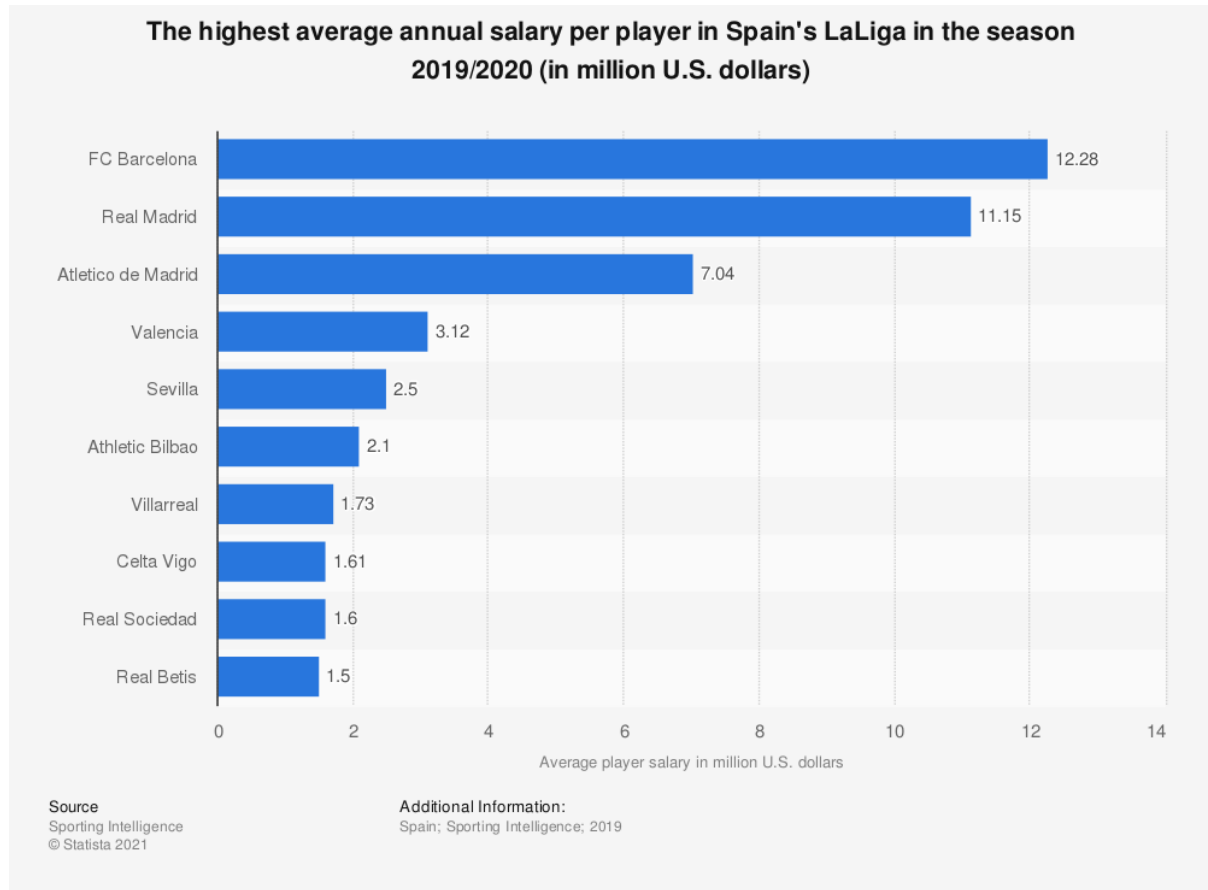
¹²⁸ With grandfathering for taxpayers already benefitting from the regime before January, 1, 2010: S. VELASCA, "changes in the Spanish 'Beckham Law', but still an attractive regime", Iberian Lawyer (<https://www.iberianlawyer.com/labor-employment-legal-updates/1752-changes-in-the-spanish-beckham-law-but-still-an-attractive-regime-cuatrecasas-qoncalves-pereira>).

¹²⁹ See <https://www.reuters.com/article/uk-soccer-spain-laliga-idUKKCN1MS2TP>.

1006/1985 (which is the decree that governs the employment relationship between a sport professional and a sport club). Sportsmen employed under any employment relationship other than one falling under the scope of Royal Decree 1006/1985¹³⁰ may still opt to be taxed under the elective regime and employed entertainers may do so as well without restrictions.

2.6.3. Overview of average player salaries in the Spanish La Liga

Figure 4: Overview of average player salaries in the Spanish La Liga



Source: see <https://www.statista.com/statistics/675461/average-la-liga-salary-by-team/>.

2.6.4. Recent events

Several Spanish football players faced issues with the Spanish tax administration, following a widespread campaign of the authorities in relation to the taxation of image rights. In most cases, image right payments were received by individual players from companies claimed to have no real economic activity, sometimes established in tax havens. Despite an internal safe-haven rule, which allowed the players to earn 15% of their total income in the form of image right income, the Spanish tax administration (successfully) argued that arm's length remuneration was not obeyed under OECD transfer pricing guidelines. Spanish legal doctrine does not unilaterally agree with the approach taken by the Spanish tax authorities, but it does seem like the tax practice is taking into account the

¹³⁰ E.g. a golf player employed by a golf course designing company: A.J. JUÁ REZ, Chapter 23: Spain in Taxation of Entertainers and Sportspersons Performing Abroad (G. MAISTO ed., IBFD 2016), *Online Books IBFD*, 5.

administrative view. As a consequence thereof, many players are rectifying their situation, voluntarily or following tax audit¹³¹.

When discussing the Spanish situation, it is also interesting to point to the judgment of the CJEU of 4 March 2021¹³². Although the case was unrelated to the remuneration of professional football players in Spain, it is of great importance to the fiscal situation of professional football in Spain. At stake was a Spanish law, adopted in 1990, which obliged all Spanish professional sports clubs to convert into a public limited sports company. However, an exception was made for certain clubs which had a positive financial balance during the years before the adoption of the new law. This exception applied to four professional football clubs: FC Barcelona, Real Madrid, Athletic Bilbao and CA Osasuna (Pamplona). These four clubs were thus able to continue operating under the legal form of a non-profit association and thereby enjoy the corresponding tax treatment for non-profit associations. This included a lower rate of income tax than the rates which normally applied in Spanish corporate income tax. Therefore, the European Commission concluded, by its decision of 4 July 2016¹³³, that this preferential tax treatment for certain football clubs constituted unlawful fiscal State aid. In its judgment of 26 February 2019, this decision was annulled by the EU General Court¹³⁴. However, in its judgment of 4 March 2021, the CJEU set aside the judgment of the General Court. This implies that the reimbursement of the fiscal State aid received by the clubs has become definite. In its judgment, the CJEU concluded that the Spanish measure was indeed an aid-scheme, since the specific tax provisions applicable to non-profit entities, such as the reduced tax rate, were capable of benefitting the football clubs for an indefinite period and for an indefinite amount. Therefore, this aid scheme was liable to favour clubs operating as non-profit entities over clubs operating as public limited sports company. Even though the present case does not relate to the personal income taxation of professional football players, it underlines a point which was made earlier in this study, namely that the issue of football and tax in the EU is multi-faceted and goes beyond the personal income tax treatment of professional football players alone.

2.7. Germany

KEY FINDING

- Germany does not have specific rules in place in relation to the individual soccer player's tax position.

2.7.1. Introduction

Germany ranked 11th out of 37 OECD countries in terms of the tax-to-GDP ratio in 2019. In 2019, Germany had a tax-to-GDP ratio of 38.8% compared with the OECD average of 33.8%¹³⁵.

Germany ranks 4th in the UEFA association club coefficient ranking 2020/21. For purposes of this study, Germany is considered to host a top competition.

¹³¹ See <https://www.sennferrero.com/2020/10/23/spanish-tax-situation-of-image-rights/>.

¹³² CJEU 4 March 2021, European Commission v. Fútbol Club Barcelona, C-362/19 P, *ECLI:EU:C:2021:169*.

¹³³ Commission Decision (EU) 2016/2391 of 4 July 2016 on the State aid SA.29769 (2013/C) implemented by Spain for certain football clubs, OJ 2016 L 357.

¹³⁴ GC 26 February 2019, Fútbol Club Barcelona v. European Commission, T-865/16, *ECLI:EU:T:2019:113*.

¹³⁵ See <https://www.oecd.org/tax/revenue-statistics-germany.pdf>.

2.7.2. The tax framework for football players

German tax resident individuals are liable to income tax on their worldwide income and assets. An individual is considered resident in Germany if his domicile or habitual place of abode is in Germany.

According to section 8 of the General Tax Code (AO), an individual's domicile is the place where he occupies a home in circumstances which indicate that he will retain and use it. Only the actual facts are relevant, not the intention of the taxpayer.

An individual's habitual place of abode is the place where he is present in circumstances which indicate that his stay is not just temporary. A habitual place of abode is deemed to exist if an individual has been continuously present in Germany for a period of more than 6 months (section 9 of the AO). A short interruption during the stay is not taken into account, i.e. it is included in the calculation of the 6-month period. A presence of less than 6 months may also create a habitual place of abode if the presence is not temporary. If the taxpayer's presence in Germany is exclusively for a visit, recuperation, cure or similar private purpose, a habitual place of abode is deemed to exist if the stay exceeds 1 year.

Individual income tax is imposed at the following progressive rates (section 32a of the EStG, hereafter the tax table for individual taxpayers for 2021).

Table 7: Income tax rates Germany

Annual taxable income (EUR)			Marginal rate (%)			Tax payable (EUR)			
Up to		9,744	0			0			
	9,745	-	14,753	14.00	-	23.97	0	-	951
	14,754	-	57,918	23.97	-	42	951	-	15,189
	57,919	-	274,612	42			15,189	-	106,200
Over		274,612	45			106,200			

Source: authors.

A 5.5% solidarity surcharge is levied on the amount of tax computed according to the above tables. The solidarity surcharge of 5.5% is levied on the income tax due (section 1 of the SolzG). Football players will usually be subject to the highest tax rate.

In German tax law, income from capital investments and other types of income (such as gains arising from private transactions) are distinguished from income from employment. All income from private capital investments are subject to a final flat withholding tax of 25%, increased to 26,375% by the solidarity surcharge. German tax law provides a tax free amount of 801 EUR per taxpayer per year. Capital gains arriving from private transactions are normally not subject to tax. However, certain exceptions do apply concerning capitals gains from immovable property and capital gains which are deemed to be speculative in the case of moveable property.

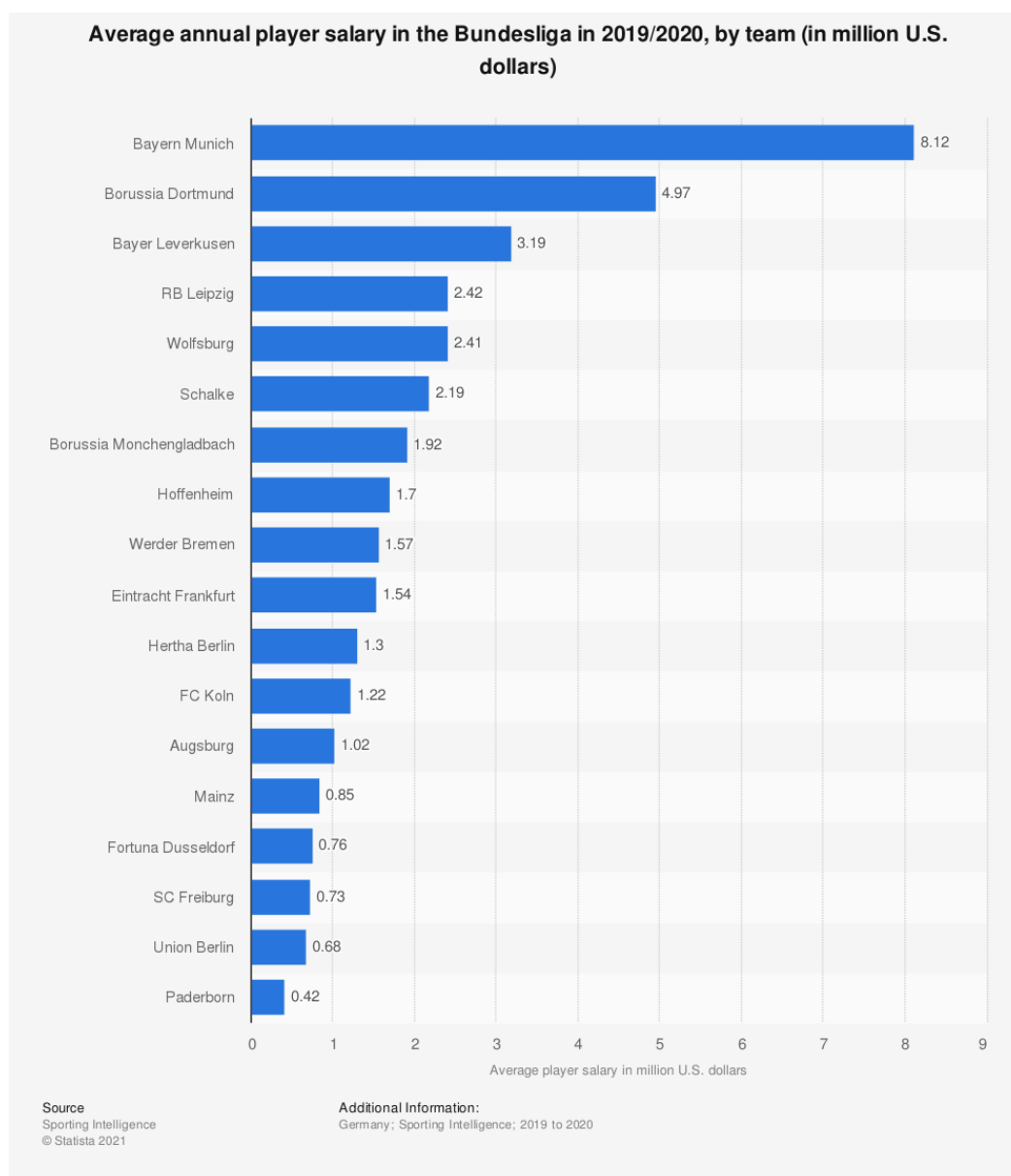
Entertainers and sportspersons who are resident in Germany are liable to German income tax on their worldwide income. There is no special migration regime from which entertainers and sportspersons moving from abroad could benefit. German tax law does not envisage an income category specifically for taxing resident entertainers and sportspersons. Income is to be assigned to the regular categories (in particular, income from employment, income from self-employment and business income)¹³⁶.

¹³⁶ C. SCHLOTTER, Chapter 18: Germany in Taxation of Entertainers and Sportspersons Performing Abroad (G. MAISTO (ed.), IBFD 2016), *Online Books IBFD* (accessed 8 26 August 2016).

Germany does not have another special regime in place covering inward expatriates¹³⁷.

2.7.3. Overview of average player salaries in the German Bundesliga

Figure 5: Overview of average player salaries in the German Bundesliga



Source: see <https://www.statista.com/statistics/675490/average-bundesliga-salary-by-team/>.

2.7.4. Recent events

In 2020, German football officials were in the eye of the storm when German prosecutors and tax authorities searched offices of the German Football Association (DFB) as well as private homes of current and former officials on suspicion of tax evasion on behalf of the DFB¹³⁸. Six officials of the DFB were suspected of having intentionally falsely declared income from advertising in soccer stadiums during home games of the national team in 2014 and 2015 as income from asset management instead

¹³⁷ See www.ibfd.org.

¹³⁸ See <https://www.reuters.com/article/uk-soccer-germany-taxevasion-idUKKBN26S172>.

of income from advertising, leading to 4.7 million euros (\$5.5 million) in unpaid taxes, as the DFB does not pay taxes on income from asset management, but is obliged to do so for income stemming from professional activities.

2.8. Case studies: conclusions

In view of the above, a conclusion that can be drawn, is that Member States are united in diversity. This makes it rather difficult to compare the individual tax burden of a football player on a country-by-country basis, as this will depend on the salary level, type of remuneration received, the application (or not) of certain tax incentives and many other parameters. By way of example: while Germany has no specific tax measures in place for football players, the (slower) progressivity of its general tax rates could lead to the conclusion that a player is better off in Germany than in The Netherlands where reductions apply through the 30%-ruling, but the highest income tax rate is reached at a lower income level already. Other Member States only have tax incentives in place for players who were not tax resident in that Member State for a certain amount of time before coming to play for a club in that Member State (i.e. expatriate regimes), while on the contrary Belgium grants a tax benefit to clubs in the sports industry subject to the condition that such benefit is invested in the education of players below the age of 23. Such regime may thus be more supportive for the club's own youth programme. Therefore, the fiscal situation of professional football players has to be assessed on an individual basis, taking into account their (previous) tax residency, height of their salary, composition of their remuneration package, the availability of other types of income, whether they receive foreign sourced income or not, etc.

At the same time, the research shows that players will, in the default situation, usually be subject to 'normal' levels of taxation, when compared to other, similarly paid professionals in that Member State. They do not specifically benefit from tax incentives in comparison with other taxpayers. In those Member States where football players do benefit from tax incentives, it should be mentioned that other taxpayers (often skilled expatriates or industries such as the R&D-sector or wider sports industry) also have access to tax stimuli. Ultimately, it seems that most (high earning) players, are always subject to the highest income tax rates. Countries do take a different approach in determining taxable base, for instance it seems that The Netherlands, France and (mainly) Italy offer greater possibilities to optimise taxable base in the benefit of the player.

Most Member States in recent years face similar issues, linked to amongst other the taxation of image rights income or the benefit resulting from clubs paying for agent fees (whereas the services of the agent are deemed to be rendered for the individual benefit of a player). There is currently no harmonised approach for these issues. Some Member States introduce specific measures, like Italy where a specific benefit in kind has been introduced (and abolished) for agent fees. Similar discussions are pending in amongst others Belgium. The same goes for image right income, where Spain has historically tried to apply a 85/15 rule, but recently nonetheless saw intensive action by the tax authorities in relation to companies of players who claimed to be applying this rule correctly. Albeit national divergent views can arise, one could consider the possibility of creating a level playing field by applying similar criteria within the EU for the taxation of image rights income or the taxation of the benefit that results from clubs paying for agent fees.

At the same time, it seems like most Member States are trying to address tax excesses that result from abusive use of tax planning in relation to these topics. Spain, as said, has quite intensively addressed the image rights income topic over the past few years, which seemingly has led to a change in tax mentality of tax players and their advisors as well. Even with harmonised legislation, one can imagine that taxpayers continue to be creative in applying the rules.

As a policy recommendation, one can then further review and enhance control measures to avoid tax excesses, in particular in a cross-border context. Specifically for the two items mentioned above (image right income and agent fees), one could look into reinforcing of reporting obligations, for instance the one already enshrined in the currently existing measures for exchange of information in tax matters in the EU (Directive 2011/16/EU). This Directive on administrative cooperation in the field of taxation already allows for exchange of information in relation to labour income in general. The scope of the Directive has been expanded at several occasions in the past few years, with changes designed for the cryptocurrency industry now pending in an eighth version of the Directive¹³⁹. A football or sports specific approach could create greater compliance and control measures in relation to topics in need thereof, such as image rights income and agent fee taxation. European cooperation in this field would allow authorities to have a better view on taxpayers receiving image rights income or benefits linked to clubs paying for individual agent fees, allowing tax authorities to have a better view on practices applied and remedy excesses.

Notwithstanding the interim conclusion of Member States being united in diversity, it could be said that Member States on their own are pursuing a common aim, at least are conscious of the impact of tax on the competitiveness of their national football leagues. Thereby, one can also not lose track of tax competition with non-EU countries. EU soccer leagues are increasingly facing competition from low tax jurisdictions like the UAE or Qatar, or countries that specifically target football players like Turkey¹⁴⁰ and (until recently) China¹⁴¹.

Most of the Member States selected for research in this study, either have specific measures in place which are an incentive to football players' income taxation (or athlete income in general), had them in place in the past or consider the introduction of these measures. Viewed in a comparative perspective, the (income) tax treatment of professional football players in EU Member States appears as lively and subject to frequent change. On the basis of our research results, the following categories can be distinguished:

- Countries with tax incentives for (amongst others) football players' income: The Netherlands, France, Italy and Belgium.

The Netherlands, France and Italy do not have targeted incentives for the football industry, but all allow football players to enjoy the benefits of a rather beneficial expatriate tax regime. These regimes allow the football players (and indirectly the clubs) to enjoy a tax-exempt part of their salary and thus basically allow for an optimization of the taxable base of the players' income. The Netherlands and France allow for a 30% exemption, whereas Italy allows a 50% exemption. The application of these regimes is subject to restrictions, mainly in the Netherlands.

Belgium also has an expatriate tax regime but does not allow application of this regime by football players. This Member State does offer a tax incentive in relation to wage withholding tax for sports clubs, where 80% of the wage withholding tax does not need to be paid to the tax administration but can be spend by the clubs (mostly subject to the condition that the incentive is spent on the education of youth players).

- Countries who had certain tax incentives in place: Spain.

¹³⁹ See https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/12632-Tax-fraud-&-evasion-strengthening-rules-on-administrative-cooperation-and-expanding-the-exchange-of-information_en.

¹⁴⁰ Turkey did however make changes to its tax policy, as a consequence of which the tax benefits for players decreased. See <https://vergiport.com/blog/new-regulations-on-the-taxation-of-football-players-in-turkey>.

¹⁴¹ See <https://www.scmp.com/sport/football/article/3113955/chinese-super-league-tightens-salary-and-spending-rules-warning>.

Spain introduced an expatriate regime in 2004, which is often referred to as the Beckham-law. This regime allowed for the qualification as tax non-resident for football players migrating to Spain and the use of preferential tax rates. As of 2015, the regime can no longer be applied by football players.

- Countries with specific tax regimes, albeit not applicable to football players: Portugal.

Portugal introduced the non-habitual tax resident regime in 2009. This regime amongst others allows skilful workers to benefit from a preferential 20% tax rate on employment income. Albeit regretted in legal doctrine, this highly beneficial tax regime is not open for football players.

- Countries with no specific tax regimes: Germany.

Germany has no specific income tax regimes in place from which professional football players could benefit.

3. CONSIDERATIONS WHEN REDESIGNING THE APPROACH AS REGARDS TAXATION OF PROFESSIONAL FOOTBALL: PITFALLS AND POLICY RECOMMENDATIONS

3.1. Preliminary remarks

Obviously, there are many regulatory and institutional objections against an EU regulatory approach regarding the tax treatment of professional football. The EU has no specific competences to do so, and Member States, in the current regulatory framework, are at liberty to determine their tax approach as regards professional football, provided the domestic set-up is not contrary to the EU fundamental freedoms and does not constitute State aid.

Therefore, EU initiatives, currently, are limited to actions that support Member States' approaches. As not a great deal of research has been – or is being – conducted in this field, the actions of the EU should first focus on knowledge building, increasing transparency and the development of best practices. This could help Member States in improving, to the extent necessary, their own domestic systems with a view to fair taxation of professional football throughout the Union, with due consideration of the specificities of professional football, warranting a supportive tax treatment.

In any event, the following considerations are relevant when contemplating changes to an existing tax treatment of professional football in a Member State.

Firstly, we reiterate that professional football's specific situation may indeed warrant certain (tax) benefits, supportive of that sector. This is a matter of policy and policy choices. As illustrated throughout this study, many existing tax (and/or social security) laws in the EU include tax benefits for professional football, for various reasons, e.g. promoting (local) youth player incentives, competitiveness of domestic competition, etc.. Moreover, tax benefits are not unique to football; there are numerous examples of other sectors of the economy that are treated favourably from a tax perspective, e.g. in Belgium the fishery sector, the night labour sector, R&D-activities, start-ups, etc. Objections can however be made to forms of unfair tax competition, which distort competition in the football sector. Therefore, benchmarking towards a fair, minimum level of taxation throughout the EU, based on the average tax pressure for professional football in the EU, is valuable in view of creating levelled regulatory playing fields.

When a Member State would redesign its tax treatment for professional football from this perspective, it should, however, be mindful of the fact that a too drastic tightening up of the tax (and social security) treatment of professional sports, as the case may be, could have a disproportionate negative effect on professional football and professional's football corporate social responsibility initiatives, vis-à-vis other Member States. Likely, a too drastic tightening up of said treatment could result in: less investments in youth, women's football and corporate social responsibility initiatives (more in general, socially valuable initiatives which, however, do not create an immediate return on investment); diminished possibility to attract top players with proven history to uplift the level of domestic football and inspire local youth; deterioration of the competitive position of domestic professional football clubs in Europe, resulting in lesser income from participation in UEFA club competitions, and a lowering of the level of quality in the domestic league with trickledown effects on media rights and other revenues, creating a vicious downward circle (also on taxable basis); clubs with weak balance sheets will struggle for survival and might fail.

For all these reasons, taxation should be set at a fair level, whilst preserving competitive balance and assuring continuation of corporate social responsibility initiatives. We should be careful not to throw the baby out with the bathwater.

Also, it is worth stressing that often clubs have developed their business model also as a function of the favourable tax treatment of professional football. This should not be overlooked. Businesses that have, in accordance with local laws, built their business plan on the basis of domestic favourable tax treatments that would be below the 'ideal' benchmark should, in event of an 'upgrade' of local tax laws, be granted sufficient time and support to step up their models in view of the new, higher benchmark.

Next, and as aforementioned, the taxation of players' remuneration is an important, yet not the only element that makes up a Member State's tax and social security approach as regards professional football. A policy approach as regards taxation of professional football should also be placed against this background in that such approach should be mindful of the fact that overall tax and social security pressure for professional football can only be truly assessed from a holistic perspective, considering all relevant elements. This inevitably requires follow-up research.

Lastly, and as also aforementioned, the domestic tax treatment of professional football should not only be approached from the perspective of cross-border mobility of players, but also from the perspective that many players are not at liberty to play abroad, yet experience the same career uncertainties and specificities as players who have the ability to play abroad. The tax treatment of professional football should also be tailored and fair as a function of these players, who form the basis of the pyramid of football players.

In what follows, we will conclude this report with a concise overview of policy actions open to the EU in general, and the European Parliament in particular. In order to formulate these recommendations, it is necessary to provide some additional insight in the legal complexities regarding the current subject matter from an EU perspective.

3.2. EU Law, sports policy and direct taxation: caught between hammer and anvil?

Traditionally, from an EU perspective, both sports law and policy and direct taxation are difficult matters to navigate, considering the limited competences of the European Union in these fields. Consequently, this also holds true when working on the intersection between sports law and policy and matters of direct taxation.

On the one hand, the current report indeed relates to sports policy. As a field of competence, sports policy has a longstanding and rather complex relationship to EU law¹⁴². Before the entry into force of the Treaty of Lisbon, the Treaties did not provide any competence to the European Community in the matter of sports law and policy. Nevertheless, over the years it became clear that sports law and policy was not insulated from the grasp of European Law.

¹⁴² See e.g. S. WEATHERWILL, "Sources and origins of EU Sports Law" in J. ANDERSON, R. PARRISH and B. GARCÍA (eds.), *Research Handbook on EU Sports Law and Policy*, Cheltenham, Edward Elgar, 2018, 6-23; S. GARDINER, J. O'LEARY, R. WELCH, S. BOYES, and U. NAIDOO, *Sports Law*, Oxford, Routledge, 2012, 146-205; A. CATTANEO and R. PARRISH, *Sports Law in the European Union*, Alphen aan den Rijn, Wolters Kluwer, 2020, 15-59.

This was confirmed by landmark judgments from the European Court of Justice, such as *Walrave & Koch*¹⁴³, *Dona v. Montero*¹⁴⁴, *Bosman*¹⁴⁵ and *Meca-Medina*¹⁴⁶. These judgments gradually made clear that, insofar as a sporting activity constitutes an economic activity as well, sports is also subject to European internal market law. In the same vein, European competition law is also applicable to sports. However, these cases hinged on European internal market law and not on any competence in the field of sports law and policy. As a result of the entry into force of the Treaty of Lisbon in 2009, the EU was awarded a (limited) competence in the field of sports policy in the form of Article 165 TFEU. However, as a legal basis for legislative acts, the competence awarded by Article 165 are very limited. It only allows the EU to adopt 'incentive measures', excluding any harmonization of laws.

Therefore, unless a legislative proposal has an internal market-dimension and can therefore be based on e.g. Article 114 or Article 115 TFEU, the legislative manoeuvring space for the EU seems to be quite limited.

This should not be taken to mean that the EU's impact on sports law and policy, even beyond its borders, should be neglected or downplayed. For example, despite initial efforts to curb its effects, the *Bosman*-ruling had a profound impact on the worldwide FIFA policies and regulations regarding player transfers¹⁴⁷.

On the other hand, the topic of research relates to direct taxation. As was already mentioned above, direct taxation is generally considered to be a stronghold of the Member States, and is often guarded quite zealously by those Member States, as it is regarded as one of the key powers inherent to national sovereignty¹⁴⁸. The topic of football and taxation relates to different aspects of direct taxation within the EU, most notably corporate income taxation (e.g. in the case of the football clubs) and personal income taxation (e.g. in the case of the taxation of the remuneration of the sportspersons). At first glance, a similar situation unfolds as is the case in the field of sports law and policy. Negatively speaking, EU law may impose limits on the manner in which Member States may conceive their national tax systems. They must exercise their powers in accordance with EU law¹⁴⁹. The limits imposed by EU law do not only concern free movement law, but competition law as well, such as adherence to the prohibition on illegal State aid. More importantly, for our purposes, is the fact that the competences for the EU to steer towards positive forms of approximation of direct tax laws of the Member States are very much limited. For example, Article 114 TFEU does not apply to direct taxation. This implies that the appropriate legal basis for legislative proposals in this field is often found to be Article 115 TFEU. Experience shows that this provision has indeed served as the (exclusive) legal basis for a number of directives in the field of direct taxation¹⁵⁰.

Most existing EU directives relating to the harmonization of direct tax laws are based on Article 115 TFEU¹⁵¹. For purposes of this report, it is important to note that the great majority of cases relate

¹⁴³ CJEU 12 December 1974, B.N.O Walrave, L.J.N. Koch v. Association Union Cycliste internationale, Koninklijke Nederlandsche Wielren Unie and Federación Española Ciclismo, Case 36-74, *ECLI:eu:c:1974:140*.

¹⁴⁴ CJEU 14 July 1976, Gaetano Donà v. Mario Mantero, Case 13-76, *ECLI:eu:c:1976:115*.

¹⁴⁵ CJEU 15 December 1995, C-415/93, Union Royale Belge des Sociétés de Football Association vs. Bosman, *ECLI:EU:C:1995:463*.

¹⁴⁶ CJEU 18 July 2006, David Meca-Medina and Igor Majcen v. Commission, Case C-519/04 P, *ecli:eu:c:2006:492*.

¹⁴⁷ S. BOYES, "Law, Regulation and the Europeanisation of a Global Game" in J. MAGEE, A. BAIRNER, and A. TOMLINSON (eds.), *The Bountiful Game? Football Identities and Finance*, London, Meyer & Meyer, 2005.

¹⁴⁸ K. LENAERTS, "Foreword" in C.H. PANAYI, W. HASLEHNER and E. TRAVERSA (eds.), *Research Handbook on European Union Taxation Law*, Cheltenham, Edward Elgar, 2020, xiv.

¹⁴⁹ See e.g. CJEU 24 October 2019, BU v. Belgian State, Case C-35/19, *ECLI/EU/C/2019/894*.

¹⁵⁰ P. WATTEL, "Taxation in the Internal Market" in P. KOUTRAKOS and J. SNELL (eds.), *Research Handbook on the laws of the EU's Internal Market*, Cheltenham, Edward Elgar, 2017, 324.

¹⁵¹ G. KOFLER, "EU Power to Tax: Competences in the Area of Direct Taxation" in C.H. PANAYI, W. HASLEHNER and E. TRAVERSA (eds.), *Research Handbook on European Union Taxation Law*, Cheltenham, Edward Elgar, 2020, 17.

(mainly) to corporate income taxation and not to personal income taxation¹⁵². This impression is reaffirmed when examining the European Commission latest initiatives in the field of direct taxation, such as its communication on ‘Business Taxation for the 21st Century’¹⁵³. Many other recent, high profile initiatives taken by the EU in direct taxation also relate mainly to corporate income taxation, such as Anti-Tax Avoidance Directives¹⁵⁴ and the European Commission’s proposal for a Common Consolidated Corporate Tax Base (CCCTB) or, more recently, the ‘Business in Europe: Framework for Income Taxation’ (BEFIT)¹⁵⁵. Initiatives aimed at personal income taxation remain relatively scarce. We can point to e.g. a communication from the Commission of 19 December 2003 on dividend taxation of individuals in the internal market¹⁵⁶.

As is well known, the application of Article 115 TFEU requires unanimity in the Council, giving each Member State a veto right to block the development of legislative proposals relating to direct taxation. In January 2019, the Commission issued a communication which advocated a gradual move from unanimity voting to an ordinary legislative procedure¹⁵⁷. It is not yet clear, however, to which extent such move can effectively be realised.

Additionally, legal literature has long discussed whether Article 116 TFEU could serve as an alternative legal basis for legislative initiatives in the field of direct taxation. However, the potential use of this provision, which is aimed at removing ‘market distortions’, is sometimes regarded as a ‘nuclear option’, considering its use would be regarded as a workaround for the unanimity requirement enshrined in Article 115 TFEU¹⁵⁸. In the last few years, several inquiry committees of the European Parliament have urged the Commission to explore whether Article 116 TFEU can be invoked to counter tax-related market distortions¹⁵⁹. However, the political viability of this option is not very clear. In a communication

¹⁵² P. WATTEL, “Taxation in the Internal Market” in P. KOUTRAKOS and J. SNELL (eds.), *Research Handbook on the laws of the EU’s Internal Market*, Cheltenham, Edward Elgar, 2017, 324; G. KOFLER, “EU Power to Tax: Competences in the Area of Direct Taxation” in C.H. PANAYI, W. HASLEHNER and E. TRAVERSA (eds.), *Research Handbook on European Union Taxation Law*, Cheltenham, Edward Elgar, 2020, 12-14. The latter author even states: “Indeed, in some areas Union action does not seem necessary (for example, with regard to most of personal income taxation)”.

There is however, some work being done regarding High Net Worth Individuals (HWNl’s). We can refer to a study published by the European Commission, DG TAXUD: Monitoring the amount of wealth hidden by individuals in international financial centres and impact of recent internationally agreed standards on tax transparency in the fight against tax evasion. The final report was published on 8 May 2021. This study is available at: <https://op.europa.eu/en/publication-detail/-/publication/0f2b8b13-f65f-11eb-9037-01aa75ed71a1/language-en/format-PDF/source-226125453>.

¹⁵³ European Commission, *Communication from the Commission to the European Parliament and the Council on Business Taxation for the 21st Century*, COM(2021) 251 final.

See also: European Commission, *Communication from the Commission to the European Parliament and the Council, An action plan for fair and simple taxation supporting the recovery strategy*, COM(2020) 312 final, p. 1-2, which highlights corporate income taxation, environmental taxation and the fight against tax avoidance and tax evasion, but which remains silent on matters of personal income taxation in general.

¹⁵⁴ Council Directive (EU) 2016/1164 of 12 July 2016 laying down rules against tax avoidance practices that directly affect the functioning of the internal market, *OJ L* 193 19 July 2016, ; Council Directive (EU) 2017/592 of 29 May 2017 amending Directive (EU) 2016/1164 as regards hybrid mismatches with third countries, *OJ L* 144 7 June 2017.

The same holds true for e.g. the Parent-Subsidiary Directive, the Merger Directive and the Interest-Royalty Directive.

¹⁵⁵ European Commission, *Communication from the Commission to the European Parliament and the Council on Business Taxation for the 21st Century*, COM(2021) 251 final.

¹⁵⁶ European Commission, *Communication from the Commission to the Council, the European Parliament and the European Economic and Social Committee on dividend taxation of individuals in the internal market*, COM(2003) 810 final.

¹⁵⁷ European Commission, *Communication from the Commission to the European Parliament, the European Council and the Council; Towards a more efficient and democratic decision making in EU tax policy*, COM(2019), 8 final.

¹⁵⁸ B. TERRA and P. WATTEL, *European Tax Law*, Alphen aan den Rijn, Wolters Kluwer, 2012, 23; P. WATTEL, “Taxation in the Internal Market” in P. KOUTRAKOS and J. SNELL (eds.), *Research Handbook on the laws of the EU’s Internal Market*, Cheltenham, Edward Elgar, 2017, 328-329; G. KOFLER, “EU Power to Tax: Competences in the Area of Direct Taxation” in C.H. PANAYI, W. HASLEHNER and E. TRAVERSA (eds.), *Research Handbook on European Union Taxation Law*, Cheltenham, Edward Elgar, 2020, 17; M. NOUWEN, “The Market Distortion Provisions of Articles 116-117 TFEU: An Alternative Route to Qualified Majority Voting in Tax Matters?”, *Intertax* 2021, 15.

¹⁵⁹ E.g. European Parliament Resolution (PANA) of 13 December 2017, 2016/3044/(RSP), para 10 and 187. In this resolution, it is stated that the European Parliament “[c]onsiders it regrettable that tax policy issues at Council level are often blocked by individual Member States; reiterates warnings made by the TAXE1 Committee according to which granting each Member State a veto right in tax matters means that the unanimity rule within the Council reduces the incentive to move from the status quo towards a more cooperative solution; reiterates its call on the Commission to use the procedure laid down in Article 116 TFEU which makes it possible to change the unanimity requirement in cases where

of 15 July 2020, the European Commission did state that “it will explore how to make full use of the provisions of the Treaty on the functioning of the EU (TFEU) that allow proposals on taxation to be adopted by ordinary legislative procedure, including Article 116 TFEU”¹⁶⁰. If this course of action would be maintained, it is to be expected that even if Article 116 TFEU would form the basis for legislative proposals, this provision will be used for tax proposals which are high on the political agenda and thus not (yet) for matters relating to personal income taxation.

Our point can be further illustrated by the answer given by the European Commissioner for Competition, Ms. Vestager, in October 2019 to a parliamentary question about the compatibility of the Italian *Decreto Crescita*, to which we referred above. Interestingly, Ms. Vestager stated that, while the Commission did not receive advance notification of the measure by the Italian government, the measure ‘appeared to concern personal income tax’ and that it ‘also seemed to apply to all inward expatriates working in any sector’¹⁶¹. In light of what we discussed above, especially the first part of this answer can serve as an illustration of the fact that personal income taxation is not (yet) very high on the (tax) agenda of the Commission.

In conclusion, it would seem that, from an EU perspective, developing policy actions in the field of personal income taxation is not self-evident, because of various reasons.

First, the issues underlying the matter are transversal and tie into different areas and aspects of (personal) income taxation. For example, we discussed that, while some Member States do not have any specific tax incentive measures in place, other Member States support the sector via specific tax mechanisms which may relate to withholding tax measures, the application of expat regimes and non-dom regimes. Thus, there is no common singular thread which can be pinpointed for legislative intervention. The comparative overview teaches us that there rather exists a patchwork of different (types) of incentive measures and fiscal support mechanisms. It is also notable that several of the identified fiscal incentive measures are primarily aimed at attracting foreign talent. This is line with findings of (the very limited amount of) empirical research which points out that countries can successfully attract foreign talented players by providing for foreigner-specific tax breaks¹⁶².

Secondly, the legislative manoeuvring space for the EU in both sports-related matters and matters of direct taxation is subject to several important limitations, the most important of which is no doubt the unanimity requirement in the Council in matters relating to direct taxation and the fact that the European Parliament is not a ‘co-legislator’ for such matters. This issue is further exacerbated by the fact that issues relating to personal income taxation are seemingly not prevalent on the agenda of the European Commission and the Council.

Thirdly, as was mentioned at the outset of this report, the personal income tax treatment of professional football players is but one aspect of a larger and more complex story. In practice, the regulatory framework applicable to professional football is shaped by several interrelated factors, including the income tax treatment of the clubs, social security regulations, image rights issues, subsidy mechanisms, the applicability of anti-money laundering legislation, etc. However, systematic

the Commission finds that a difference between the provisions laid down by law, regulation or administrative action in Member States is distorting the conditions of competition in the internal market;” and that the Parliament “calls on the Commission to present a legislative proposal under Article 116 TFEU”.

See also the Report of the European Parliament of 16 November 2017 on the inquiry into money laundering, tax avoidance and tax evasion (2017/2013(INI)), para. 193 and European Parliament Resolution of (TAXE 3) of 26 March 2019, 2018/2121(INI), para. 66.

¹⁶⁰ European Commission, *Communication from the Commission to the European Parliament and the Council, An action plan for fair and simple taxation supporting the recovery strategy*, COM(2020) 312 final, p. 2.

¹⁶¹ See https://www.europarl.europa.eu/doceo/document/E-9-2019-002224-ASW_EN.pdf.

¹⁶² See *supra*, fn. 42 and 49.

(comparative legal) research into these fields is lacking. In that respect, the current research report is but one piece of a larger puzzle.

Fourthly, because the sector and its regulatory framework is constantly evolving. By way of example, and even though it falls outside the scope of this research report, we can refer to the new phenomenon of major football clubs issuing 'fan tokens', which can be bought and sold by fans, but which can also be form part of the remuneration package of football players, as was the case in Lionel Messi's transfer to Paris Saint-Germain (see *supra*). Apart from regulatory responses which are already in the pipeline, such as the Markets in Crypto-Assets Regulation (MiCA)¹⁶³ these practices will inevitably raise new questions in the field of the income tax treatment of professional football players too, such as questions surrounding the status of these fan tokens as taxable benefits in kind and the moment and method of their valuation. Therefore, it necessary to closely monitor the evolutions in this sector.

3.3. Policy recommendations: towards a more levelled playing field?

From the previous sections of this report, it became clear that the topic of research is underdeveloped from a scholarly perspective. Policy-wise, a similar view unfolds. Despite the economic and societal importance of the sector, remarkably little attention has been dedicated to the fiscal (and related regulatory) framework surrounding professional football. Our first recommendation would therefore be to place the topic on the agenda and to raise awareness, both as a matter of research and as a matter of generating policy attention. Additional research will be necessary to provide a more complete picture of the regulatory (tax) framework of the professional football sector within the EU, with more countries in scope. In addition, the income tax treatment of the football clubs themselves merits follow-up research, as well as the related question of the choice of legal entity type and its impact upon the applicable taxation regime, questions surrounding the use of fan tokens and their role of remuneration packages of players, developments in the use of image rights regimes, the social security treatment of professional football players, etc.

Subsequently, the question arises as to which policy responses can be developed regarding matters of taxation in professional football. As was discussed above, several options are available, but due to the transversal character of the issues, combined with the specific character of the sector and the specificities characterizing direct taxation from an EU perspective, many of these options are not so straightforward. In view of the authors, the traditional 'hard law' solutions which are at the EU's disposal are, at least as the matter currently stands, not (politically) viable.

One can think of, for example, assessing whether the existing individual regimes constitute illegal State aid. As we have discussed throughout this report, this question has been raised regarding several Member States' regimes, either by political parties (e.g. in the case of Belgium and Italy) or by legal doctrine (e.g. in the case of France and the Netherlands). In the case of Spain, the CJEU already determined that illegal State aid was given to several football clubs, although the State aid did not concern the income tax treatment of the players themselves. However, due to the multitude of dispersed tax incentive regimes with their own specific characteristics, the apparent lack of policy interest in personal income taxation from a State aid perspective and the difficulty to maintain a holistic view of the tax treatment of the professional football sector in different Member States throughout individual State aid procedures, the EU's mechanisms to counter illegal State aid alone do not seem to constitute an appropriate policy response.

¹⁶³ See <https://www.europarl.europa.eu/legislative-train/theme-a-europe-fit-for-the-digital-age/file-crypto-assets-1>.

Another possible policy response which may be considered is the route of legislative action. For example, by issuing one or more directives to harmonize and strive towards a more levelled playing field. Again, this solution seems hardly appropriate because of several reasons. For example, any legislative action based on Article 115 TFEU would require unanimity in the Council due to the special legislative procedure. The likelihood of all Member States reaching unanimous agreement about proposed measures relating personal income taxation does not seem very great. Moreover, because fiscal incentive regimes differ between the Member States, there is no singular issue to be addressed. In a legislative proposal. In order to address the question of a levelled playing field in tax matters, any legislative instrument would necessarily have to constitute a patchwork of various provisions relating to differing aspects of personal income taxation. Moreover, taking legislative action on the basis of Article 116 TFEU would be equally difficult. Not only does the application of this Article hinge on the determination of a 'market distortion' due to tax discrepancies¹⁶⁴, for which additional research would be needed, the use of this article in personal income tax matters could, moreover, be perceived as an encroachment upon the Member States' fiscal sovereignty and the provisions for the harmonization of national tax systems in the TFEU.

In view of the authors of this report, it is therefore better to resort to alternative policy actions in the form of 'soft law' solutions as a way to move forward. Several policy actions can be considered in this field.

Firstly, the approaches taken by the Member States towards professional football can, from a fiscal perspective, be regarded as a form of 'tax competition'. As became clear from our comparative overview, most Member States have some form of fiscal incentive regime in place which is of interest to the professional football sector. When combined with the insight that such tax advantages, specifically the ones aimed at attracting foreign talent, do lead to a mobility response of (foreign) professional players, one can wonder where the limits of healthy 'tax competition'¹⁶⁵ may lie. In other words, at what point would such measures constitute a form of 'unfair' or 'harmful' tax competition? Indeed, a parallel or a link can be made between the tax treatment of the professional football sector in different Member States and the broader issue of unfair or harmful tax competition, especially as regards corporate income taxation, which has been prominent on the EU and OECD agenda's for years¹⁶⁶.

This interest in harmful tax competition has been translated into various policy measures. Arguably, one of the most important measures has been the adoption of the Code of Conduct for Business Taxation by the Council of Economics and Finance Ministers (ECOFIN) in 1997¹⁶⁷. For an in depth-discussion of the Code of Conduct, we may refer to another research report¹⁶⁸. For our purposes, it is

¹⁶⁴ M. NOUWEN, "The Market Distortion Provisions of Articles 116-117 TFEU: An Alternative Route to Qualified Majority Voting in Tax Matters?", *Intertax* 2021, 16-22; E. VAN DE VELDE and F. CANNAS, *Harmful Tax Practices in the EU: Definition, Identification and Recommendations*, Publication for the Subcommittee on tax matters, Policy Department for Economic, Scientific and Quality of Life Policies, European Parliament, Luxembourg, 2021, 38-39.

¹⁶⁵ In legal literature, 'tax competition' is defined as '*improving the relative competitive position of one country vis-à-vis other countries by reducing the tax burden on businesses and individuals in order to retain, gain or regain mobile economic activities and the corresponding tax base, whether at the expense of other countries or otherwise*'. See: B.J. KIEKEBELD, *Harmful Tax Competition in the European Union: Code of Conduct, Countermeasures and EU Law*, Alphen aan den Rijn, 2004, 8.

¹⁶⁶ See: E. VAN DE VELDE and F. CANNAS, *Harmful Tax Practices in the EU: Definition, Identification and Recommendations*, Publication for the Subcommittee on tax matters, Policy Department for Economic, Scientific and Quality of Life Policies, European Parliament, Luxembourg, 2021, 47 p.

¹⁶⁷ Conclusions of the ECOFIN Council Meeting on 1 December 1997 concerning taxation policy – Resolution of the Council and the Representatives of the Governments of the Member States, meeting within the Council of 1 December 1997 on a Code of Conduct for Business Taxation, 98/C 2/01.

¹⁶⁸ E. VAN DE VELDE and F. CANNAS, *Harmful Tax Practices in the EU: Definition, Identification and Recommendations*, Publication for the Subcommittee on tax matters, Policy Department for Economic, Scientific and Quality of Life Policies, European Parliament, Luxembourg, 2021, 47 p.

important to note that the Code of Conduct is a soft law instrument, which is not legally binding, but which was conceived as a ‘political agreement’¹⁶⁹ or a ‘gentleman’s agreement’¹⁷⁰. The Code of Conduct covers different types of tax measures, such as (tax) laws or regulations and administrative practices and provides criteria to identify harmful practices. However, the Code does not provide for an authoritative definition of harmful tax competition. The Code further reflects the intention of the Member States to, on the one hand, refrain from introducing new tax measures which are harmful within the meaning of the Code (standstill) and to commit themselves to re-examining their existing laws and established practices in order to eliminate measures which are deemed to be harmful on the other hand (rollback). In doing so, the Code clearly reflects a political agreement to commit to curbing harmful tax competition in the business sector. However, as the focus of the Code lies on business taxation, it does not (directly) cover personal income taxation.

Even though the Code of Conduct is a soft law instrument, it does not lack impact. The mission of the Code of Conduct Group is to assess measures that may fall within the scope of the Code of Conduct and is composed of representatives from the Member States and the European Commission. Research shows that, although not perfect, the Code of Conduct Group has achieved impressive results in tackling different kinds of preferential tax regimes in the Member States.¹⁷¹ This implies that the soft law approach, based on political consensus, has indeed succeeded in bringing about fairer tax competition in several respects. In some cases, this is because the Member States themselves adjust these tax regimes. In some other cases, the work of the Code of Conduct Group has for example led to the adoption of binding hard law instruments, as was the case for work done by the Code of Conduct Group that led to the adoption of Council Directive 2015/2376 on the automatic exchange of cross-border tax rulings¹⁷². In yet other cases, the work has led to the reassessment of existing tax measures under the European State aid rules¹⁷³. This was the case for the tax regulations regarding ‘coordination centres’ in Belgium. This tax regime was first examined by the European Commission in 1984 and was declared in line with State aid provisions¹⁷⁴. However, after the Code of Conduct Group included the measure in its list of potentially harmful tax measures in 1999, the measure was found to be in breach of State aid provisions by the Commission in 2003¹⁷⁵.

Furthermore, the work of the Code of Conduct Group is also valued by the Commission itself, as is shown by a response from the Commission to a recommendation by the European Parliament. According to the Commission, it is of the view *“that the Code of Conduct has been a very useful tool which has allowed the abolition or change of an impressive number of harmful tax regimes. This constitutes a significant contribution to the work of eliminating harmful tax competition in the EU and beyond. [...] One of the reasons for the success of the Code of Conduct is that it works through peer pressure and in a less formalistic format which has led to relatively open discussions and finding politically accepted solutions.”*¹⁷⁶.

¹⁶⁹ E. TRAVERSA and A. FLAMINI, “Fighting Harmful Tax Competition through EU State Aid Law: Will the Hardening of Soft Law Suffice?”, *European State Aid Quarterly* 2015, 326.

¹⁷⁰ T. LAMBERT, “Marché intérieur et évasion fiscale”, *Les Petits Affiches* 2002, n° 97, 39; M. NOUWEN, “The Market Distortion Provisions of Articles 116-117 TFEU: An Alternative Route to Qualified Majority Voting in Tax Matters?”, *Intertax* 2021, 24.

¹⁷¹ M.F. NOUWEN, *Inside the EU Code of Conduct Group: 20 Years of Tackling Harmful Tax Competition*, University of Amsterdam (11 June 2020), Dissertation, 353 ff.

¹⁷² *Ibidem*, 311.

¹⁷³ E. TRAVERSA and A. FLAMINI, “Fighting Harmful Tax Competition through EU State Aid Law: Will the Hardening of Soft Law Suffice?”, *European State Aid Quarterly* 2015, 327-328.

¹⁷⁴ See para. 8 ff. of the Order of the Court of First Instance in Case T-276/02 of 2 June 2003, *Forum 187 ASBL v. Commission*.

¹⁷⁵ Commission Decision of 17 February 2003 on the aid scheme implemented by Belgium for coordination centres established in Belgium, 2003/755/EC, *OJ L* 282.

¹⁷⁶ European Commission, *Follow up to the European Parliament non-legislative resolution of 12 December 2017 on the European Parliament draft recommendation to the Council and the Commission following the inquiry into money laundering, tax avoidance and tax evasion*, 2016/3044 (RSP), available at: <https://oeil.secure.europarl.europa.eu/oeil/spdoc.do?i=30550&j=0&l=en>.

It would seem then that the policy approach which has been taken in the case of the Code of Conduct would also lend itself well to approach the challenges posed by the tax treatment of professional football players and, more in general, the challenges posed by personal income taxation in the EU. For example, setting up a 'Code of Conduct-like mechanism' for personal income taxation that also could also pay particular attention to the case of taxation of professional football players:

- would in itself entail an exercise in awareness raising, without having to resort to hard law solutions. Only an agreement in principle about criteria for the identification of harmful practices and an engagement to gradually roll back harmful regimes would be required;
- would allow the assessment of differing tax regimes through the lens of harmful tax competition in the professional football sector, while taking into account both the potentially larger scope of application of each individual regime and its specific impact on the professional football sector;
- would allow for flexibility and would allow to take into account developments in the field in the ongoing detection of potentially harmful tax regimes;
- would allow for both detailed technical assessments of national measures and political discussion, which does not constitute an encroachment upon the national tax sovereignty of the Member States; and
- would allow for input for politically agreed solutions and possibly even the development of (targeted) hard law measures which are supported by the Member States or targeted State aid investigations where appropriate.

In addition to the foregoing, the active involvement and cooperation of the professional football sector itself would be advisable and self-evident. In this regard, we can refer to the ongoing cooperation agreement concluded between the European Commission and the UEFA, concluded in February 2018¹⁷⁷. In the cooperation agreement, specific attention is dedicated to the promotion of a healthy regulatory framework for the long-term development of football (highlights by the authors):

3.2.10. The Sides share the ambition to prevent that the football sector is used for money laundering purposes. *UEFA notes the Commission's efforts to identify and assess risks relating to money laundering in the European Union and will engage in this process to help the Commission to assess money laundering risks in the football sector.*

3.2.11. The Sides are aware of the crucial role whistle-blowers can play when it comes to fighting money laundering, fraud, aggressive tax planning or corruption, *or otherwise shedding light on hidden behaviours that may exist in the football sector. In this light, the Sides affirm their support for the establishment of effective mechanisms to encourage the reporting of wrongdoings.*

3.2.12 The Sides recognise the importance of fair taxation and the need to tackle aggressive tax planning, tax fraud and evasion. *The proposed amendment to the Directive on Administrative Cooperation, once agreed, will bring greater transparency, notably to the work of intermediaries giving advice on certain tax related matters which could include such advice to those in the football sector."*

¹⁷⁷ Arrangement for Cooperation between the European Commission and the Union of European Football Associations (UEFA), C(2018) 876 final.

This version of the cooperation agreement continued until 31 December 2020. In a renewed version of the cooperation agreement, it can be considered to dedicate additional attention to matters of compliance and taxation. For example, the UEFA could strive towards the development of an 'ethical charter' for (professional) football clubs containing commitments regarding fair taxation and the fight against aggressive tax planning, tax avoidance and tax evasion. Likewise, the UEFA could play a role in the development of best practices and clearing rules regarding the detection and prevention of money laundering.

Furthermore, active involvement of the UEFA, its member associations of EU Member States and other football internal stakeholders in a Code of Conduct-like mechanism would be a strong signal towards policy makers that the football pyramid itself is engaged towards a fair and benchmarked taxation of professional football, for the greater good of all stakeholders, belonging to the football pyramid and civil society alike.

REFERENCES

- AARONS, E., *Agent Jorge Mendes' homes searched in money laundering investigation*, <https://www.theguardian.com/football/2020/mar/04/agent-jorge-mendes-homes-searched-in-money-laundering-investigation>.
- AGAFONOVA, R., "International Skating Union versus European Commission: Is the European sports model under threat?", *Int. Sports Law J.* 2019, 87-101.
- Algemene Rekenkamer, "Fiscale tegemoetkoming voor experts uit het buitenland: de 30%-regeling", Den Haag, Algemene Rekenkamer 2016, 32p., electronically available via https://www.rekenkamer.nl/binaries/rekenkamer/documenten/rapporten/2016/05/18/fiscale-tegemoetkoming-voor-experts-uit-het-buitenland-de-30-regeling/Rapport_30procentregeling.pdf.
- Answer given by Ms Vestager on behalf of the European Commission, E-002224/2019, https://www.europarl.europa.eu/doceo/document/E-9-2019-002224-ASW_EN.pdf.
- APPLEBY, A., "Levelling the Playing Field: A separate tax regime for International Athletes", 36 *Brook J. Int'l L.* 630, 2011, 605-646.
- ARNAUT, J., *Independent European Sport Review*, 1 October 2006, 175p., electronically available via http://eose.org/wp-content/uploads/2014/03/independant_european_sports_review1.pdf.
- BADDELEY, M., "The extraordinary autonomy of sports bodies under Swiss law: lessons to be drawn", *Int. Sports Law J.* 2020, 3-17.
- BANSRAJ, V.S.J., "De 30%-regeling", in *Fiscale Economie* 2014 (electronically available via <http://hdl.handle.net/2105/17617>).
- BBC, *Messi: What are the PSG fan tokens given to the footballer?*, <https://www.bbc.com/news/world-58094912>.
- BERETTA, G., "From worldwide to Territorial Taxation: is Italy Now an Attractive Destination for Migrating Individuals", *Bulletin for International Taxation*, August 2017, 437-443.
- BOYES, S., "Law, Regulation and the Europeanisation of a Global Game" in J. MAGEE, A. BAIRNER, and A. TOMLINSON (eds.), *The Bountiful Game? Football Identities and Finance*, London, Meyer & Meyer, 2005, 230-247.
- CABRAL MATOS, F. and RISCADO RAPOULA, J., *Portugal: Taxation of image rights*, https://www.sportsandtaxation.com/2017/01/portugal-taxation-of-image-rights/#_ftn3.
- CABRITA NETO, S., TRACANA, D. and RODRIGUES, J., "Taxation of artists and sportspersons in Portugal", *Sports Law & Taxation*, Nolot, 52-56.
- CAILLARD, N., *An outsider in its own league: AS Monaco unlikely to benefit from the French government's support amid the Covid-19 crisis*, <https://www.linklaters.com/en/insights/blogs/sportinglinks/2020/april/an-outsider-in-its-own-league-as-monaco-covid-19-crisis>.
- CASTILLO, J. C., "Play Fresh, Play Local: The Case of Athletic de Bilbao", *Sport in Society* 2007, 682-683.

- CATTANEO, A., and PARRISH, R., *Sports Law in the European Union*, Alphen aan den Rijn, Wolters Kluwer, 2020, 250p.
- CHAPPELET, J.-L., "The autonomy of sport and the EU", in J. ANDERSON, R. PARRISH and B. GARCÍA (eds.), *EU Sports law and Policy*, Cheltenham, Edward Elgar Publishing, 2018, 157-172.
- CJEU 1 April 2008, C-212/06, Government of the French Community and Walloon Government v Flemish Government, *ECLI:EU:C:2008:178*.
- CJEU 12 December 1974, C-36-74, B.N.O Walrave, L.J.N. Koch v. Association Union Cycliste internationale, Koninklijke Nederlandsche Wielren Unie and Federación Española Ciclismo, *ECLI:eu:c:1974:140*.
- CJEU 14 July 1976, C-13-76, Gaetano Donà v. Mario Mantero, *ECLI:eu:c:1976:115*.
- CJEU 15 December 1995, C-415/93, Union Royale Belge des Sociétés de Football Association vs. Bosman, *ECLI:EU:C:1995:463*.
- CJEU 18 July 2006, C-519/04 P, David Meca-Medina and Igor Majcen v. Commission, *ecli:eu:c:2006:492*.
- CJEU 21 June 2016, C-15/15, New Valmar BVBA v Global Pharmacies Partner Health Srl, *ECLI:EU:C:2016:464*.
- CJEU 24 October 2019, C-35/19, BU v. Belgian State, *ECLI/EU/C/2019/894*.
- CJEU 4 March 2021, European Commission v. Fútbol Club Barcelona, C-362/19 P, *ECLI:EU:C:2021:169*.
- CJEU 4 May 2016, C-358/14, Republic of Poland v. European Parliament, *ECLI:EU:C:2016:323*.
- CJEU 8 May 2014, C-483/12, Pelckmans Turnhout NV v. Walter Van Gastel Balen NV *et al.*, *ECLI:EU:C:2014:304*.
- COMMISSIE FINANCIËN, Verzoek om schriftelijk commentaar op het evaluatierapport over de 30%-regeling, https://www.tweedekamer.nl/debat_en_vergadering/commissievergaderingen/details?id=2017A02118.
- Commission Decision (EU) 2016/2391 of 4 July 2016 on the State aid SA.29769 (2013/C) implemented by Spain for certain football clubs, *OJ L* 357, 28 December 2016, 1–16, electronically available via <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32016D2391&from=en>.
- Commission Decision of 17 February 2003 on the aid scheme implemented by Belgium for coordination centres established in Belgium, 2003/755/EC, *OJ L* 282, 30 October 2003, 25–45, electronically available via <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32003D0757&from=EN>.
- Conclusions of the ECOFIN Council Meeting on 1 December 1997 concerning taxation policy – Resolution of the Council and the Representatives of the Governments of the Member States, meeting within the Council of 1 December 1997 on a Code of Conduct for Business Taxation, 98/C 2/01, *OJ C* 2, 6 January 1998, 1-6, electronically available via [https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:31998Y0106\(01\)&from=EN](https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:31998Y0106(01)&from=EN).
- Council Directive (EU) 2016/1164 of 12 July 2016 laying down rules against tax avoidance practices that directly affect the functioning of the internal market, *OJ L* 193, 19 July 2016, 1-14, electronically available via <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32016L1164&from=EN>.

- Council Directive (EU) 2017/592 of 29 May 2017 amending Directive (EU) 2016/1164 as regards hybrid mismatches with third countries, *OJ L 144*, 7 June 2017, 1–11, electronically available via <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32017L0952&from=EN>.
- DE DYCKER, S., "Good governance in Sport: comparative law aspects", *Int. Sports Law J.* 2019, 116-128.
- DELOITTE, *Annual Review of Football Finance*, June 2020, <https://www2.deloitte.com/uk/en/pages/sports-business-group/articles/annual-review-of-football-finance.html>, 64p.
- Directive (EU) 2015/849 of the European Parliament and the Council of 20 May 2015 on the prevention of the use of the financial system for the purposes of money laundering and terrorist financing, amending Regulation (EU) No 648/2012 of the European Parliament and the of the Council and repealing Directive 2005/60/EC of the European Parliament and of the Council and Commission Directive 2006/70/EC, *OJ L 141*, 5 June 2015, 73-117, electronically available via <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32015L0849&from=EN>.
- Directive (EU) 2018/843 of the European Parliament and the Council of 30 May 2018 amending Directive (EU) 2015/849 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing, and amending Directives 2009/138/EC and 2013/36/EU, *OJ L 156*, 19 June 2018, 43-74, <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32018L0843&from=EN>.
- DIRECTORATE-GENERAL FOR TAXATION AND CUSTOMS UNION, *Monitoring the amount of wealth hidden by individuals in international financial centres and impact of recent internationally agreed standards on tax transparency on the fight against tax evasion*, <https://op.europa.eu/en/publication-detail/-/publication/0f2b8b13-f65f-11eb-9037-01aa75ed71a1/language-en/format-PDF/source-226125453>.
- DUBOILLE, N. and DAL PONTE, A., *France: Special expatriate tax regime – a breath of fiscal oxygen under control*, <https://www.internationaltaxreview.com/article/b1r0bshk97wpw9/france-special-expatriate-tax-regime-a-breath-of-fiscal-oxygen-under-control>.
- EC, "Report from the European Commission to the European Parliament and the Council on the assessment of the risk of money laundering and terrorist financing affecting the internal market and relating to cross-border activities", COM(2019) 370 final, 21p., electronically available via <https://op.europa.eu/en/publication-detail/-/publication/0b2ecb04-aef4-11e9-9d01-01aa75ed71a1/language-en>.
- EC, *Arrangement for Cooperation between the European Commission and the Union of European Football Associations (UEFA)*, C(2018) 876 final, electronically available via https://sport.ec.europa.eu/sites/default/files/library/documents/decision-eu-uefa-cooperation-2018_1.pdf.
- EC, *Communication from the Commission to the Council, the European Parliament and the European Economic and Social Committee on dividend taxation of individuals in the internal market*, COM(2003) 810 final, <https://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2003:0810:FIN:EN:PDF>.
- EC, *Communication from the Commission to the European Parliament and the Council on Business Taxation for the 21st Century*, COM(2021) 251 final, https://ec.europa.eu/taxation_customs/system/files/2021-05/communication_on_business_taxation_for_the_21st_century.pdf.

- EC, *Communication from the Commission to the European Parliament and the Council, An action plan for fair and simple taxation supporting the recovery strategy*, COM(2020) 312 final, <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52020DC0312&from=EN>.
- EC, *Communication from the Commission to the European Parliament and the Council, An action plan for fair and simple taxation supporting the recovery strategy*, COM(2020) 312 final, <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52020DC0312&from=EN>.
- EC, *Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions – Developing the European Dimension in Sport*, 18 January 2011, COM(2011) 12 final, <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52011DC0012&from=EN>.
- EC, *Communication from the Commission to the European Parliament, the European Council and the Council, Towards a more efficient and democratic decision making in EU tax policy*, COM(2019), 8 final, <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52019DC0008&from=en>.
- EC, *Follow up to the European Parliament non-legislative resolution of 12 December 2017 on the European Parliament draft recommendation to the Council and the Commission following the inquiry into money laundering, tax avoidance and tax evasion*, 2016/3044 (RSP), <https://oeil.secure.europarl.europa.eu/oeil/spdoc.do?i=30550&j=0&l=en>.
- EC, *Report on the assessment of the risk of money laundering and terrorist financing affecting the internal market and relating to cross-border activities*, 24 July 2019, COM(2019) 370 final, <https://op.europa.eu/en/publication-detail/-/publication/0b2ecb04-aef4-11e9-9d01-01aa75ed71a1/language-en>.
- EC, *Sport in the European Union*, https://ec.europa.eu/assets/eac/sport/library/documents/eu-sport-factsheet_en.pdf.
- EC, *Tax fraud & evasion – strengthening rules on administrative cooperation and expanding the exchange of information*, https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/12632-Tax-fraud-&-evasion-strengthening-rules-on-administrative-cooperation-and-expanding-the-exchange-of-information_en.
- EC, *White Paper on Sport*, 11 July 2007, COM/2007/0391 final, <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52007DC0391&from=EN>.
- EP, *Report of the European Parliament of 16 November 2017 on the inquiry into money laundering, tax avoidance and tax evasion (2017/2013(INI))*, 123p., electronically available via https://www.europarl.europa.eu/doceo/document/A-8-2017-0357_EN.html.
- ESHQOOR, K., "Tax optimization in European Football: Attracting Top Talent" (available via *ResearchGate*, citing the papers by KLEVEN et. al.).
- EU Work Plan for Sport 2011-2014, OJ C 1 June 2011.
- EU Work Plan for Sport 2014-2017, OJ C 14 June 2014.
- EU Work Plan for Sport 2017-2020, OJ C 15 June 2017.
- EU Work Plan for Sport 2021-2024, OJ C 4 December 2020.
- European Parliament Resolution (PANA) of 13 December 2017, 2016/3044/(RSP), [https://oeil.secure.europarl.europa.eu/oeil/popups/ficheprocedure.do?lang=en&reference=2016/3044\(RSP\)](https://oeil.secure.europarl.europa.eu/oeil/popups/ficheprocedure.do?lang=en&reference=2016/3044(RSP)).

- European Parliament Resolution of (TAXE 3) of 26 March 2019, 2018/2121(INI), <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52019IP0240&rid=7>.
- European Parliament Resolution of 29 March 2007 on the Future of Professional Football in Europe, 2006/2130(INI), <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52007IP0100&from=EN>.
- European Parliament Resolution of 8 May 2008 on the White Paper on Sport, 2007/2261(INI), https://www.europarl.europa.eu/doceo/document/TA-6-2008-0198_EN.html.
- European Parliament's resolution of 11 June 2015 on recent revelations on high-level corruption cases in FIFA, (2015/2730(RSP)), <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52015IP0233&from=EN>.
- European Platform for Sport Innovation, Position paper on the impact of the COVID-19 crisis on the sport sector, https://euoffice.eurolympic.org/files/position_paper_COVID-19%20final_revision.pdf.
- EVANS, S., *Messi joins crypto craze as gets part of PSG fee in fan tokens*, <https://www.reuters.com/lifestyle/sports/exclusive-messis-paris-st-germain-package-includes-crypto-fan-tokens-2021-08-12/>.
- EXPERT GROUP ON GOOD GOVERNANCE, *Promotion of existing Good Governance Principles. Final document* July 2016, 12p., electronically available via <https://www.eusport.org/files/245-181-xg-gg-deliverable-4-good-governance-principles.pdf.pdf>.
- EXPERT GROUP, "GOOD GOVERNANCE", *Deliverable 2 Principles of good governance in sport*, September 2013, 30p., electronically available via https://ec.europa.eu/assets/eac/sport/library/policy_documents/xg-gg-201307-dlvrb12-sept2013.pdf.
- EY, "Tax And Career Facilities For Professional Football Players in 2013", <http://www.spins.si/design/uploads/content/FIFPro%20proef%204.pdf>, 19p.
- FINANCIAL STABILITY, FINANCIAL SERVICES AND CAPITAL MARKETS UNION, *Anti-money laundering and countering the financing of terrorism legislative package*, https://ec.europa.eu/info/publications/210720-anti-money-laundering-countering-financing-terrorism_en.
- FLORENTINO, CARREÑO, "Spain: Spanish Impatriates Tax Regime. Trusts & Trustees", *Oxford* Vol. 23, Iss. 1, (Feb 2017), 20-22.
- GAMMELSAETER, H. and SENAUX, B., "Perspectives on the Governance of Football Across Europe" in H. GAMMELSAETER and B. SENAUX (eds.), *The Organisation and Governance of Top Football Across Europe*, Routledge, 2011, 1-16.
- GARCÍA, B. and de WOLFF, M., "European law and the governance of sport" in J. ANDERSON, R. PARRISH and B. GARCÍA (eds.), *EU Sports law and Policy*, Cheltenham, Edward Elgar Publishing, 2018, 287-306.
- GARCIA, B., JAMES, M., KOLLER, D., LINDHOLM, J., MAVROMATI, D., PARRISH, R. and RODENBERG, R., "The impact of Covid-19 on sports: a mid-way assessment", *Int. Sports Law J.* 2020, 115-119.
- GARDINER, S., O'LEARY, J., WELCH, R., BOYES, S. and NAIDOO, U., *Sports Law*, Oxford, Routledge, 2012, 656p.

- GC 26 February 2019, Fútbol Club Barcelona v. European Commission, T-865/16, *ECLI:EU:T:2019:113*.
- GEERAERT, A., *The EU in international sports governance – a principal agent perspective on EU control of FIFA and UEFA*, London, Palgrave Macmillan, 2016, 208p.
- GLOBALWEBINDEX, *Sports Around the World*, 2018, <https://iccopr.com/wp-content/uploads/2019/03/Sports-Around-the-World-report.pdf>, 35p.
- Guidance no. 17/2011 by the Portuguese Tax Authority.
- HANF, D., "Reverse discrimination in EU Law: Constitutional Aberration, Constitutional Necessity or Judicial Choice?", *Maastricht Journal of European and Comparative Law* 2011, 29-61.
- HOUBEN, R. and NUYTS, S., *A new deal for professional football in the EU*, Cambridge, Intersentia, 2021, 52p.
- HOUBEN, R. with cooperation of DE GEZELLE, A., VERHEES, A. and VERMEULEN, P., "Het Belgisch profvoetbal aan anti-witwasnormering onderworpen. Een kritische analyse in context", *RW* (forthcoming).
- IBFD, www.ibfd.org.
- INSTRUCTION INTERMINISTERIELLE N° DSS/5B/2019/152 du 02 juillet 2019 relative à l'exploitation commerciale de l'image, du nom et de la voix des sportifs et entraîneurs professionnels, <https://www.legifrance.gouv.fr/download/pdf/circ?id=44792>.
- JUÁ REZ, A.J ., Chapter 23: Spain in Taxation of Entertainers and Sportspersons Performing Abroad (G. Maisto ed., IBFD 2016), *Online Books IBFD*, 5.
- KIEKEBELD, B.J., *Harmful Tax Competition in the European Union: Code of Conduct, Countermeasures and EU Law*, Alphen aan den Rijn, 2004, 160p.
- KITCHING, J. and FIDA, P., "International Federations" in N. DE MARCO QC (ed.), *Football and the Law*, Haywards Heath, Bloomsbury Professional, 2018, 25.
- KLEVEN, H., LANDAIS, C. and SAEZ, E., "Taxation and International Migration of Superstars: Evidence from the European Football Market", *American Economic Review* 2013, 1892-1924.
- KLEVEN, H., LANDAIS, C., MUÑOZ, M. and STANTCHEVA, S., "Taxation and Migration: Evidence and Policy Implications", *Journal of Economic Perspectives* 2020, 119-142.
- KOFLER, G., "EU Power to Tax: Competences in the Area of Direct Taxation" in C.H. PANAYI, W. HASLEHNER and E. TRAVERSA (eds.), *Research Handbook on European Uni*
- KPMG, "The European Champions Report 2017", https://www.footballbenchmark.com/documents/files/public/The_European_Champions_Report_2017.pdf, 28p.
- KPMG, *Multi-club ownerships – Is it the future of football?*, <https://footballbenchmark.com/library/multi-club-ownerships-is-it-the-future-of-football> on *Taxation Law*, Cheltenham, Edward Elgar, 2020, 11-50.
- L'AGENZIA INFORMA, *Tax incentives for attracting human capital in Italy*, <https://www.agenziaentrate.gov.it/portale/documents/20143/233483/Tax+incentives+for+attracting+human+capital+in+Italy+Tax+incentives+for+attracting+human+capital+in+Italy.pdf/f4a91a80-8ed0-92a5-0186-424a9013bfc3>.
- LAMBERT, T., "Marché interieur et évasion fiscale", *Les Petits Affiches* 2002, n° 97, 34-40.

- LEGISLATIVE TRAIN SCHEDULE, *Proposal for a regulation of the European Parliament and of the Council on markets in crypto-assets*, <https://www.europarl.europa.eu/legislative-train/theme-a-europe-fit-for-the-digital-age/file-crypto-assets-1>.
- LENAERTS, K., "Foreword" in C.H. PANAYI, W. HASLEHNER and E. TRAVERSA (eds.), *Research Handbook on European Union Taxation Law*, Cheltenham, Edward Elgar, 2020, xiv.
- M. COLLET, *Taxation of foreign professional football players: France takes the offensive*, <https://cms.law/en/fra/publication/taxation-of-foreign-professional-football-players-france-takes-the-offensive>.
- MARTIN, R., *La Liga president says proposed tax reforms could see elite players leave*, <https://www.reuters.com/article/uk-soccer-spain-laliga-idUKKCN1MS2TP>.
- Mathew, B., "Private capital's rush into the business of sport", *Financial Times* 28 December 2020, <https://www.ft.com/content/9ba35ff2-ac31-41d2-8ff9-6107a64d0ae5>.
- MCKINSEY & COMPANY, *The Value Pitch*, 3 September 2020, <https://www.mckinsey.com/industries/consumer-packaged-goods/our-insights/the-value-pitch-the-importance-of-team-value-management>.
- MICHEAU, C., *State Aid, Subsidy and Tax Incentives under EU and WTO Law*, Alphen aan den Rijn, Kluwer Law International, 2014, 616p.
- MILNE, M., *The Transformation of Television Sport – New Methods, New Rules*, Hampshire, Palgrave Macmillan, 2016, 220p.
- MOLENAAR, D., "Ronaldo, voetbal en belastingontduiking", *WFR* 2019/29, 1-6.
- MONTEJO, E., *Spanish tax situation of image rights*, <https://www.sennferrero.com/2020/10/23/spanish-tax-situation-of-image-rights/>.
- MORENO, A., and LOPEZ LOPEZ, H., "Brain drain tax vs. Brain Gain Benefits: General thoughts from a Spanish Perspective", *Annals of the Faculty of Law in Belgrade*, <https://www.ceeol.com/search/article-detail?id=848464>.
- MORROW, S., "History, Longevity, and Change – Football in England and Scotland" in H. GAMMELSAETER and B. SENAUX (eds.), *The Organisation and Governance of Top Football Across Europe*, Routledge, 2011, 46-61.
- NAFZIGER, J. A. R., "A comparison of the European and North American models of sports organisation", *Int. Sports Law J.* 2008, 100-108.
- NIELSEN SPORTS, *World Football Report 2018*, <https://www.nielsen.com/ph/en/insights/report/2018/world-football-report/#>.
- NOS, *DNB: bank moet meer doen tegen fraude voetbalwereld*, <https://nos.nl/artikel/2152747-dnb-bank-moet-meer-doen-tegen-fraude-voetbalwereld>.
- NOUWEN, M., "The Market Distortion Provisions of Articles 116-117 TFEU: An Alternative Route to Qualified Majority Voting in Tax Matters?", *Intertax* 2021, 1-18.
- NOUWEN, M., *Inside the EU Code of Conduct Group: 20 Years of Tackling Harmful Tax Competition*, University of Amsterdam (11 June 2020), Dissertation, 624p.
- OECD, *Revenue Statistics 2020 – Belgium*, <https://www.oecd.org/tax/revenue-statistics-belgium.pdf>.
- OECD, *Revenue Statistics 2020 – France*, <https://www.oecd.org/tax/revenue-statistics-france.pdf>.

- OECD, *Revenue Statistics 2020 – Germany*, <https://www.oecd.org/tax/revenue-statistics-germany.pdf>.
- OECD, *Revenue Statistics 2020 – Italy*, <https://www.oecd.org/tax/revenue-statistics-italy.pdf>.
- OECD, *Revenue Statistics 2020 – Portugal*, <https://www.oecd.org/tax/revenue-statistics-portugal.pdf>.
- OECD, *Revenue Statistics 2020 – Spain*, <https://www.oecd.org/tax/revenue-statistics-spain.pdf>.
- OECD, *Revenue Statistics 2020 – the Netherlands*, <https://www.oecd.org/tax/revenue-statistics-netherlands.pdf>.
- Order of the Court of First Instance in Case T-276/02 of 2 June 2003, *Forum 187 ASBL v. Commission*.
- PARRISH, R., “Europe: The Transformation of football” in A. NIEMANN, B. GARCIA and W. GRANT (eds.), *The transformation of European football – Towards the Europeanisation of the national game*, Manchester, Manchester University Press, 2011.
- PARRISH, R., “Sources and origins of EU sports policy” in J. ANDERSON, R. PARRISH and B. GARCÍA (eds.), *EU Sports law and Policy*, Cheltenham, Edward Elgar Publishing, 2018, 24-48.
- PARRISH, R., CATTANEO, A., LINDHOLM, J., MITTAG, J., PEREZ-GONZALEZ, C. and SMOKVINA, V., *Promoting and Supporting Good Governance in the European Football Agents Industry*, European Commission report, October 2019, 139p., electronically available via <https://www.edgehill.ac.uk/law/files/2019/10/Final-Report.pdf>.
- PARRISH, R., GARCIA, B., MIETTINEN, S. and SIEKMANN, R., *The Lisbon Treaty and EU sports policy*, European Parliament Study, 2010, 7p., electronically available via https://www.europarl.europa.eu/meetdocs/2009_2014/documents/cult/dv/esstudyeusportspolicy/esstudyeusportspolicyen.pdf.
- PAY TV INNOVATION FORUM, *The Global Market for Premium Sports OTT Services – Special Report*, July 2019, <http://files.clickdimensions.com/nagracom-adglw/files/sportsottreport.pdf>.
- PEARLE, “The Ultimate Cookbook For Cultural Managers – Artist Taxation In An International Context”, <https://www.pearle.eu/publication/the-ultimate-cookbook-for-cultural-managers-artist-taxation-in-an-international-context>
- Penale Sent. Sez. 3 Num. 29095, <https://www.giurisprudenzapenale.com/wp-content/uploads/2020/11/Cass-29095-20.pdf>.
- PIJETLOVIC, K., *EU Sports Law and Breakaway Leagues in Football*, The Hague, T.M.C. Asser Press, 2015, 333p.
- POLI, R., RAVENEL, L. and BESSON, R., “Expatriate footballers worldwide: global 2021 study”, *CIES Football Observatory Report n° 65*, May 2021, <https://football-observatory.com/IMG/sites/mr/mr65/en/>
- REDACTIE VOETBAL BELGIË, *11 rode duivels richtten vennootschap in engeland op*, <https://www.voetbalbelgie.be/specials/11-rode-duivels/2021/02/12/>.
- RÉPUBLIQUE FRANÇAISE, *Special expatriate tax regime*, <https://www.impots.gouv.fr/portail/internationalenindividual/special-expatriate-tax-regime>.
- REUTERS STAFF, *German authorities search offices, homes in DFB tax evasion probe*, <https://www.reuters.com/article/uk-soccer-germany-taxevasion-idUKKBN26S172>.

- ROXBURGH, D.S., "Domicile and the Remittance Basis in UK Taxation", 46 *Eur. Taxn.* 10 (2006), *Journals IBFD*.
- RUSSELL, D., "The historical signification of locality and regional identity to football" in J. HUGHSON *et al.* (eds.), *Routledge Handbook of Football Studies*, New York, Routledge, 2017, 18-28.
- SCHALEKAMP, R.P., "De 30%-regeling voor ingekomen werknemers. Stand van zaken per juni 2017", *MBB* 2017/09, 121p.
- SCHLOTTER, C., Chapter 18: Germany in Taxation of Entertainers and Sportspersons Performing Abroad (G. MAISTO (ed.), *IBFD* 2016), *Online Books IBFD*.
- SPORTBUSINESS CONSULTING, *Global Media Report* 2018, <https://www.sportbusiness.com/2018/11/sportbusiness-consulting-global-media-report/>.
- SWAVING DIJKSTRA, E., "De 30%-regeling en het staatssteun verbod: voorkomen is beter dan genezen", *Weekblad voor Fiscaal Recht* 2019/152.
- SWOBODA, A.J. at the 14 October 2020 Congress of the Club Brugge Chair (electronically available via <https://www.uantwerpen.be/en/chairs/club-brugge-chair/conferences/>).
- TAVECCHIO, A., CALDARA, M., and BARONE, R., "The Cristiano Ronaldo Transfer to Juventus: The New Italian Resident Regime Benefits Athletes from Around the World", *ITSG Global Tax Journal*, October 2018, 11-16.
- TENORE, M., "Chapter 19: Italy in Taxation of Entertainers and Sportspersons Performing Abroad", in G. MAISTO (ed.), *IBFD* 2016, *Online Books IBFD*, 4, electronically available via www.ibfd.org.
- TERRA, B. and WATTEL, P., *European Tax Law*, Alphen aan den Rijn, Wolters Kluwer, 2012, 1107p.
- TIJSKENS, D., *Rode Duivels trekken met hun geld naar Engeland*, https://www.standaard.be/cnt/dmf20210211_98282895.
- TRAVERSA, E. and FLAMINI, A., "Fighting Harmful Tax Competition through EU State Aid Law: Will the Hardening of Soft Law Suffice?", *European State Aid Quarterly* 2015, 323-331.
- UEFA, *Country coefficients*, <https://www.uefa.com/memberassociations/uefarankings/country/#/yr/2022>.
- VANCROMBRUGGE, S., "Opbrengsten van beroepsvoetballer uit portretrecht zijn baten", *Fiscoloog Internationaal* 415, 7.
- VAN DE VELDE, E. and CANNAS, F., *Harmful Tax Practices in the EU: Definition, Identification and Recommendations*, Publication for the Subcommittee on tax matters, Policy Department for Economic, Scientific and Quality of Life Policies, European Parliament, Luxembourg, 2021, 47p., electronically available via [https://www.europarl.europa.eu/thinktank/en/document.html?reference=IPOL_STU\(2021\)662905](https://www.europarl.europa.eu/thinktank/en/document.html?reference=IPOL_STU(2021)662905).
- VELASCA, S., "changes in the Spanish "Beckham Law", but still an attractive regime", *Iberian Lawyer* (<https://www.iberianlawyer.com/labor-employment-legal-updates/1752-changes-in-the-spanish-beckham-law-but-still-an-attractive-regime-cuatrecasas-goncalves-pereira>).
- VERBIST, V., *Reverse Discrimination in the European Union: A Recurring Balancing Act*, Cambridge, Intersentia, 2017, 357p.
- VERGI PORT, *New Regulations on the Taxation of Football Players in Turkey*, <https://vergiport.com/blog/new-regulations-on-the-taxation-of-football-players-in-turkey>.

- WATTEL, P., "Taxation in the Internal Market" in P. KOUTRAKOS and J. SNELL (eds.), *Research Handbook on the laws of the EU's Internal Market*, Cheltenham, Edward Elgar, 2017, 319-349.
- WEATHERWILL, S., "Sources and origins of EU Sports Law" in J. ANDERSON, R. PARRISH and B. GARCÍA (eds.), *Research Handbook on EU Sports Law and Policy*, Cheltenham, Edward Elgar, 2018, 6-23.
- Wet van 4 mei 2007 betreffende het fiscaal statuut van de bezoldigde sportbeoefenaars, *BS* 15 mei 2007, 26331.
- Wetsvoorstel betreffende het fiscaal statuut van de bezoldigde sportbeoefenaar, *Parl. St. Kamer* 2005-06, nr. 2787/001.
- Wetsvoorstel tot opheffing van diverse bepalingen betreffende de sociale bijdragen en inkomstenbelasting van betaalde sportbeoefenaars, 18 November 2019, nr. 55-0764/001.
- Wetsvoorstel tot wijziging van diverse bepalingen met betrekking tot voordelen voor sportclubs, *Parl. St. Kamer* 2019-2020, nr. 55-0911/001, 8-25.
- WHITE, J., *Chinese Super League tightens salary and spending rules, warning clubs not to 'test our determination'*, <https://www.scmp.com/sport/football/article/3113955/chinese-super-league-tightens-salary-and-spending-rules-warning>.
- WILLEMS, M.M.L. and MESTROM, B.J., "Fiscaliteit en sport" in S. JELLINGHAUS (ed.), *Capita Sportrecht*, 's-Hertogenbosch, Gompel&Svacina, 2018, 415-460.
- X. "A flat-tax scheme is luring the wealthy to Italy", *The economist*, <https://www.economist.com/europe/2020/10/29/a-flat-tax-scheme-is-luring-the-wealthy-to-italy>.
- X., *Football Leaks*, https://en.wikipedia.org/wiki/Football_Leaks.

This study scrutinises the tax treatment of professional football players' remuneration throughout the European Union. It does so on the basis of a comparative analysis of selected country schemes. It draws conclusions and formulates suggestions for a future European Union approach.

This document was provided by the Policy Department for Economic, Scientific and Quality of Life Policies at the request of the Economic and Monetary Affairs Subcommittee on tax matters (FISC).

PE 695.451

IP/A/FISC/2021-03

Print ISBN 978-92-846-8509-7 | doi:10.2861/255871 | QA-09-21-379-EN-C

PDF ISBN 978-92-846-8508-0 | doi:10.2861/249841 | QA-09-21-379-EN-N