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Global Sports Law and Taxation Reports

Contents

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Correction note:
The article "CAS Case: Mallorca v. UEFA Villareal", published from p. 29 in GSLTR 2011/2 from p. 29, was written by both Mr. Adam Whyte and Mr. Wouter Lambrecht.
Mr. Wouter Lambrecht, Legal Counsel to the European Club Association (ECA), was unintentionally not mentioned as author, we do apologize for that!

Editorial

We are proud to present and welcome readers to the September 2011 issue (2011/3) of our new Journal and on-line database: **Global Sports Law and Taxation Reports (GSLTR)**.

This month sees our on-line facility going live and we will hope to include topical news items affecting the legal and fiscal side of international sport between our quarterly issues of the Journal itself and thereby keep our readers up to date. Readers may access our website at 'www.gsltr.com' with effect from the end of September 2011.

One other item of news: please take note that the Publishers of this Journal, who are also experienced Conference Organisers, are putting on a Seminar in London on 13 & 14 October, 2011 on the important topic of Sports TV Rights and how to protect and maximise them from a legal and tax point of view. Details of this major event may be obtained by logging onto 'www.sportsandtaxation.com'. We look forward to welcoming many of our readers to this timely Seminar with the 2012 London Olympics less than a year away. As a taster for the subject of the commercialisation of Sports TV Rights, the mega revenues from which contribute disproportionally to the financing of major international sports events, we are publishing a timely article on 'The Collective Selling of Sports Audio-visual Rights under Italian Law' by Dr Luca Ferrari, a leading Italian Sports Lawyer, who, incidentally, will be speaking at the London Conference on the vexed question of the Collective Selling of Sports TV Rights within the European Union. A very important topic indeed, which has caused - and continues to cause - a great deal of controversy!

As the corruption allegations at FIFA, the World Governing Body of Football, continue to dominate the news headlines and sports agenda, we feature a thought-provoking article, entitled 'Kicking Corruption out of Football' by Keith McGarry, a Sports Lawyer from Northern Ireland. In this article, he analyses the causes of these problems facing FIFA and offers some legal and practical solutions for resolving them for the benefit of all the stakeholders in the world's most favourite sport – not least the commercial partners of FIFA, such as COCA-COLA and ADIDAS, who have voiced their concerns – quite rightly so – over corruption in football, and, if FIFA is to continue to rely on their very valuable association and financial support and sponsorship, they are expecting radical reforms in the governance and regulation of the so-called 'beautiful game'. Or, as some critics have remarked, has football become too big and beyond the pale? Certainly, FIFA has a great deal to do to restore its credibility; and, of course, the sooner, the better!

Whilst on the subject of football – not only the world's favourite sport but also its most lucrative one – we also publish a topical article on the UEFA new financial fair play rules by London-based Sports Lawyers Max Eppel and Xabier de Beristain Humphrey, who are not sure how effective they will prove to be in practice. A case of the jury is out and, therefore, wait and see! As regards football finances generally, it may be mentioned that Manchester United FC have announced that they will float on the Singapore Stock Exchange in the fourth quarter of this year to raise US$1 billion. This development, once again, raises the controversial question of how football clubs should be organised from a legal and financial point of view. According to UEFA, they should not be publicly-owned quoted companies, but mutuals owned by their members. In other words, owned and managed by their fans. A sensible arrangement, but, one may reasonably ask, is it too late to turn the tide?

Another subject that is never far from the sporting headlines and generates a lot of interest and differing points of view more widely is doping. Some sports commentators and academics take the view that those who wish to dope should be allowed to do so; whilst, for others, such a proposition is anathema and completely at odds with the essential idea of sport and that is: fair play. In this issue, we publish an Opinion by Professor Ian Blackshaw, not on the merits and demerits of doping (a topic for another time!), but on the commercial and financial consequences suffered, especially by elite athletes, who earn their livings from the practice of their sports and who fall foul of the doping rules, and how best to deal with these consequences – by settling financial claims for compensation by Mediation rather than through the Courts, as the Diane Modahl case so clearly demonstrated several years ago.

In this edition, packed with topical information on a wide range of legal and fiscal issues affecting the sporting world, we also begin a new comparative series of articles on the impact of VAT on Sport and how to reduce it in a number of major sporting jurisdictions, starting with France, Germany, Spain and Swizerland, contributed by leading tax lawyers from these countries.

We are also including an article on the aims and activities of the new Centre for International Sports Law, which has recently been set up at the University of Staffordshire in the United Kingdom, within the Law School. As readers will see form this contribution, there is such a thing as Sports Law, a question we posed in the first issue of GSLTR (2010/1), and, in fact, that it is thriving and reaching ever new and expanding heights and horizons!

Incidentally, the Channel Island of Guernsey, an important offshore financial centre, has now issued a Policy Document on the introduction of a new registrable image right, similar to a trademark, which we reported on in our first issue (2010/1) and which is expected to be introduced by the end of this year and be a world first for this kind of specific legal right. As Jason Romer, a partner in the Law Firm Collas Crill, who is closely following and monitoring these developments, has remarked:

> *"By way of comparison, the image rights regime in Guernsey is likely to be akin to that of trade marks. However, where trademarks seek to recognise and protect the distinctiveness of a brand, image rights will do so for the distinctiveness and personality of an individual."*

Obviously, a very valuable legal right for celebrities and sports stars to have in their hands and exploit!

Finally, as always, we would welcome your comments and suggestions on our Journal, which will help us to realise our mission of producing and providing an invaluable and must-have resource for all those involved in the ever-evolving and often intertwined fields of sports law and taxation.

As usual, we would also welcome and value your contributions in the form of articles and topical case notes and commentaries. Please also spread the word about our Journal, amongst your professional colleagues and associates around the World, and encourage them to subscribe to our Journal, and thereby help us to achieve a truly global footprint and reach.

So, now read on and enjoy the September 2011 issue of GSLTR!

Dr Rijkele Betten *(Managing Editor)*
Prof. Ian S. Blackshaw *(Consulting Editor)*

GSLTR OPINION

Doping: the commercial and financial effects and how best to deal with them

by Professor Ian Blackshaw

Introductory remarks

With so much money at stake in sport nowadays, the pressure on sports persons to win is very great indeed. So much so, that some sports persons are prepared to win at any costs. In other words, to cheat; and one form of cheating that, despite the continuing efforts of the World Anti Doping Agency, whose motto is "play true", is doping. That is, the use of performance enhancing banned substances and the employment of high tech methods, for example, gene doping, to gain an unfair advantage. That, after all, is what sport is all about: fair play!

Unfortunately, the Olympic motto of "it is the taking part not the winning that counts" has, in many instances, gone by the board. In fact, there is anecdotal evidence to the effect that many athletes, given the chance to take a banned substance that would assure them of a gold medal but would also lead them to a very early death, would readily take the substance in order to win!

Doping not only leads to sporting sanctions and penalties, but also has significant commercial and financial implications for the offenders. This will be the subject of this opinion and how best to deal with them.

The commercial and financial effects of doping

The commercial and financial effects of doping offences may be many and varied, depending upon the level and status of the sports person concerned.

For example, lucrative sponsorship and endorsement contracts may be terminated under so-called "morality clauses". No corporate sponsor wants their company and its products and services to be associated with cheats. That does nothing at all for their goodwill! Again, opportunities for other sports-related commercial deals in the future may also be lost; for largely the same reasons. In fact, the sports person's career may come to an abrupt end, as a result of bans imposed on competing in future sporting events. Such bans, especially lifetime bans, may not only raise commercial and financial issues but also legal questions. For example, "restraints of trade" issues. In other words, the elite sports persons concerned may not be able to earn their livelihood in the future. For example, the British Olympic Association has a rule whereby any sports person coming under their jurisdiction that tests positive for a banned substance is precluded for life from competing in future Olympic Games. Incidentally, the author of this opinion is of the view that such a ban is an unlawful restraint of trade and, therefore, void. But that is a complex subject for another occasion!

The Dianne Modahl case

One important financial consequence of a doping case arises where the "offender" is wrongly accused of a doping "offence" and temporarily suspended from competition. This happened in the famous – if not, infamous! – Dianne Modahl doping case. In that case, Modahl protested her innocence from the outset and it subsequently transpired that, due to poor and improper storage conditions of the samples, Modahl was exonerated by her international sports federation – the IAAF (International Association of Athletic Federations). In other words, she was cleared of the doping "offence". Modahl then sought to claim compensation of £ 1 million from the British Athletic Federation (BAF), her national sports body, for financial losses, including the loss of lucrative sports-related commercial contracts, suffered as a result of the unlawful doping ban imposed on her by the IAAF. Her English Court proceedings ended in failure in the English Court of Appeal on 12 October, 2001, where the Court rejected her claim – on somewhat technical and esoteric grounds, namely that Modahl did not have a contract with the BAF.

Modahl was financially ruined by this litigation, having spent over £ 1 million on legal fees and in the process having had to sell two houses that she and her husband (her trainer) owned. She could not, therefore, afford to take her case to the House of Lords, the final Appellate Court in the UK at that time. The author of this opinion is of the view that the Court of Appeal was wrong in its finding and, therefore, she may well have succeeded with her claim in the House of Lords. However, what is clear – and is the moral of this story and others like it – that Modahl should not have involved the ordinary Courts but have sought relief through some form of Alternative Dispute Resolution (ADR). That is, by *"extra-judicial"* means.

Mediation of sports disputes

One form of ADR which particularly lends itself to the amicable settlement of sports disputes, including commercial ones, is mediation. But to be successful,

the parties in dispute have to be ready and willing to try to settle their dispute amicably. Without this important element being present, the mediation is bound to fail. For example, a number of years ago, the Rugby Football Union (RFU) was attempting to resolve a major dispute between the two top divisions in the English Rugby Union involving 26 professional clubs and suggested mediation. The chairman of the RFU considered that appointing an independent third party with specialist skills in resolving difficult disputes was the right way forward. However, the head of the English First Division Rugby said: "It wouldn't make any difference if they brought the Queen in to arbitrate!" So, obviously, in these circumstances mediation would not work!

However, one sporting commercial dispute in which mediation did work involved a dispute between the boxer, Richie Woodhall, and the boxing promoter, Frank Warren. In that case, involving a contractual dispute and a sum of £ 300,000, the matter was settled, despite Court proceedings having been started, within 72 hours of a mediation having been arranged, to the satisfaction of both parties. [1]

Returning now to settling doping disputes by ADR, it is recommended to use the mediation and arbitration services provided by the Court of Arbitration for Sport (CAS), which is based in Lausanne, Switzerland. Or indeed, a combination of these two forms of ADR: so-called "Med-Arb" – mediation to identify the issues, and, if not successful (generally speaking, mediation is 85% successful in those cases where mediation is appropriate), then arbitration to settle the issues.

It should be noted that, under article 1, paragraph 2 of the CAS Mediation Rules (2010 Edition), mediation is expressly excluded for disciplinary and doping offences. Obviously, one cannot compromise on a doping offence – either it was committed or it was not! However, CAS mediation is possible – and, indeed, in the view of the author of this opinion, most appropriate for dealing with and settling the commercial and financial consequences which often follow from a doping case.

We will now turn our attention to the standard clauses to be used when invoking mediation and arbitration, including Med-Arb, by the CAS.

CAS mediation and arbitration clauses

Before dealing with these clauses, it is necessary to explain the legal rules on which the jurisdiction of the CAS in any given case is based.

The general rules on jurisdiction are as follows:

> *"These Procedural Rules apply whenever the parties have agreed to refer a sports-related dispute to the CAS. Such disputes may arise out of an arbitration clause inserted in a contract or regulations or of a later arbitration agreement (ordinary arbitration proceedings) or involve an appeal against a decision rendered by a federation, association or sports-related body where the statutes or regulations of such bodies, or a specific agreement provides for an appeal to the CAS (appeal arbitration proceedings)."* [2]

Furthermore, under the special provisions that apply to the CAS Ordinary Arbitration Proceedings, which are applicable to sports-related business and commercial disputes as well as mediation, the party seeking CAS arbitration of a sports-related dispute is required to file a written Request for Arbitration and/or Mediation, which must contain, inter alia:

> *"a copy of the contract containing the arbitration agreement or of any document providing for arbitration in accordance with these Procedural Rules."* [3]

It will be seen from the above procedural requirements, that it is advisable to include express provisions in sports marketing agreements, especially international ones, dealing with dispute resolution by ADR and, in particular, expressly referring disputes to arbitration and mediation through the auspices of the CAS. Of course, it is possible to refer disputes to the CAS for resolution at the time they arise. Such so-called *"ad hoc"* references, however, as will be appreciated, rely upon the agreement of the parties to the dispute. This is not always achieved, in practice: one party, for example, may be willing to go to mediation and/or arbitration; whilst the other party is not!

There are some standard clauses for expressly referring sports-related commercial disputes to CAS mediation and/or arbitration, under the CAS Ordinary Arbitration Procedure, as well as Med-Arb references as follows.

The standard CAS arbitration reference clause for a commercial dispute is as follows:

> *"Any dispute arising from or related to the present contract will be submitted exclusively to the Court of Arbitration for Sport in Lausanne, Switzerland, and resolved definitively in accordance with the Code of Sports-related Arbitration."*

The parties may – and it is advisable to do so – include in this reference clause additional provisions regarding the number of CAS arbitrators (from one to three) and the language in which the CAS proceedings will be conducted (for example, English, which, together with French, is one of the two official languages of the CAS). It is also possible to state a particular venue for the CAS proceedings.

The standard CAS reference clause for mediation is as follows:

> *"Any dispute, any controversy or claim arising under, out of or relating to this contract and any subsequent amendments of or in relation to this contract, including, but not limited to, its formation, validity, binding effect, interpretation, performance, breach or termination, as well as non-contractual claims, shall be submitted to mediation in accordance with the CAS Mediation Rules. The language to be used in the mediation shall be ..."*

The standard CAS reference clause for mediation followed by arbitration (Med-Arb) is as follows:

> *"If, and to the extent that, any such dispute has not been settled within 90 days of the commencement of the mediation, or if, before the expiration of the said period, either party fails to participate*

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1 On this case and the advantages of mediation for settling sports-related disputes generally, including commercial and financial ones, see respectively Sport. Mediation and Arbitration by Ian S. Blackshaw, 2009, The TMC Asser Press, The Hague, The Netherlands, p. 130 and Sports Mediations: Preserving Sporting and Business Relationships by Ian Blackshaw, Association for International Arbitration (AIA), Brussels, Belgium, November 2010 Newsletter, p. 9-10.

2 Article R27 of the CAS Code of Sports-related Arbitration (2010 Edition).

3 Article R38, ibid.

or continue to participate in the mediation, the dispute shall, upon the filing of a Request for Arbitration by either party, be referred to and finally settled by CAS arbitration pursuant to the Code of Sports-related Arbitration. When the circumstances so require, the mediator may, at his own discretion or at the request of a party, seek an extension of the time limit from the CAS President."

Concluding remarks

Although it is not possible to mediate doping cases, it is possible, and, indeed, advisable to deal with the commercial and financial consequences of doping cases as far as the sports person is concerned. *A fortiori*, mediation of such issues is very important, where, as in the Dianne Modahl case, the sports person is wrongly accused and banned for a doping offence. Mediation saves time and money and generally offers a win-win outcome. On the other hand, there can only be one winner (and, therefore, a loser) in Court proceedings!

It is very important to include express dispute resolution clauses in sports marketing agreements, especially sponsorship and endorsement agreements, providing for mediation and/or Med-Arb. Rather than to rely on so-called "ad hoc" references, which require the agreement of the parties at the time a dispute arises. Such mutual agreement cannot always be guaranteed – one party may be for mediation or Med-Arb, whilst the other party is against!

After twenty-seven years of operations, CAS mediations and arbitrations are proving to be fair, relatively inexpensive, quick and effective in purely sporting disputes as well as sports-related commercial ones, especially those with an international dimension.

Of course, if injunctive relief is needed in a particular case, then, of course, the Courts are the proper forum.

Italy:

The collective selling of sports audio-visual rights under Italian law

by Luca Ferrari [1], with the assistance of Stella Riberti [2]

Introduction

Collective selling of sports broadcasting rights was established by Legislative Decree nr. 9 of 9 January 2008 (the "Melandri Decree") [3]. The statutory regulation, enacted on the emotional wave of the big scandal, which shattered Italian football in the summer of 2006, represented indeed a U-turn in respect of the legislation then in force (Law nr. 78 of 29 March 1999), which affirmed clubs' individual ownership of audiovisual rights to football games played at home, save for sharing of profit, on a reciprocity basis, with the visiting club. The scandal involved mainly top clubs, Juventus above all, who were charged and heavily sanctioned (Juventus was relegated to Serie B) not for match fixing, but for keeping too cosy liaisons and exercising undue and (albeit only presumed) effective influence over some referees and their supervisors. The excessive gap in revenues between top, influential clubs and the rest of Serie A, was considered then as one of the key-factors of the abuses, which also led to a significant public aversion to individual selling of TV rights. A reform was politically convenient, if not correct. So, the Italian legislator intervened and opted for a sweeping change of the system, introducing collective ownership and selling.

The main purpose of the Law is stated in the preamble: to ensure the transparency and the efficiency of the broadcasting rights market and regulate the allocation of financial resources with a view to seeking the competitive balance among the clubs and encouraging the youth sectors of both the professional and the amateur categories [4].

While Law nr. 78/1999 was limited to football, the scope of application of the Melandri Decree includes events (matches) concerning *"professional championships, cups and tournaments organized for team sports at national level"* (art. 1). The definition results in basketball and football being the only sports falling under the collective selling system, given that they are:

– team sports;
– qualified as professional by their respective sports association, according to the Italian Olympic Committee (CONI) rules;
– organized as team championships or tournaments.

Moreover, whereas the previous Law nr. 78/1999 only applied to "television broadcasting rights in codified format" (i.e. pay-TV rights), the new regulation applies to "sports audiovisual rights", which include cable TV, free-to-air TV, the internet and mobile phones.

The Melandri Decree is organized in a three-fold partition, whose subjects are:

a ownership of audiovisual rights;
b marketing thereof;
c sharing of revenues.

"Audio-visual rights" are defined as the exclusive rights, lasting for fifty years from the date of the event, to:

– the recording and reproduction of the audiovisual images relating to the event;
– the communication to the public of such reproductions;
– the distribution, rental or lending of the original or the copies, in whole or in part, of the recording;
– the use of the images for advertising and promotional purposes;
– the storage of the event's images .[5]

The ownership of the audiovisual rights

The key provision of the new regulation relates to ownership of audiovisual rights in the "events". The legislator introduced the concept of joint-ownership [6] of the right to broadcast the sports events by the "competition organizer" (i.e. the League) and the "event organizer" (i.e. the host club). As we will see in the next paragraph, despite formal recognition of the collective/joint ownership, the Melandri Decree assigns to the League (competition organizer) the leading role of exclusive licensor of the audiovisual rights.

The event organizer (the club) maintains the exclusive ownership on "library rights", i.e. audiovisual recordings of matches that took place at least 8 days before. The library right is subject, however, to the host club permission, on a reciprocity basis, to save and store the audiovisual recordings of home matches.

The marketing of the audio-visual rights

The competition organizer (the League) is designated by the Melandri Decree as the **exclusive worldwide licensor** of the audiovisual rights. In other words, the re-

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1 Partner, CBA Studio Legale e Tributario, Milan/Padova.
2 Associate, CBA Studio Legale e Tributario, Milan/Padova.
3 The Legislative Decree nr. 9 of 9 January 2008, the so-called "Melandri Decree", from the Italian Minister who promoted it.
4 As we will see below, to achieve this purpose, the Melandri Decree provides for a quota of the licensing revenues to be set aside for mutuality purposes (articles 22 and 24).
5 Art. 2, para 1, letter o).
6 The Melandri Decree adhered to the Germanic juridical notion of joint ownership, whereby each co-owner has the entirety of the rights over the joint property, as opposed to the Romanic one, whereby each co-owner is entitled to an ideal quota of the property.

form puts in place a centralised marketing system operated by the League. However, in order to prevent anti-competitive effects, the legislator introduces checks and balances derived from the remedies developed by the European Commission [7].

The League is required to determine, approve (by 2/3 majority) and publish the **guidelines** for the marketing and licensing of the media rights, including the criteria for the formation of different "**packages**", if it so decides. Guidelines and packages must be drawn up so as to ensure the widest participation of the media operators and a suitable number of live matches in each package to offer each operator a balanced and competitive product. Once issued by the League, such guidelines must be submitted for approval to the Italian Communications and Media Authority [9] and the Italian Antitrust Authority . Within 60 days, each authority must verify their compliance with the principles of fair trade and the provisions set forth by the Decree, and either approve or reject them with suggestions as to any amendments required.

To ensure the right balance between centralised selling and diversified buyers operating different platforms (mainly digital free-TV; digital pay-TV; satellite pay-TV), the Decree imposes a duty to offer the broadcasting rights **to all media operators of each available platform** by way of multiple competitive tenders for the national, international and radio-phonic market. Tenders must be completed and available long before the kick-off of the first season concerned, so as to give broadcasting operators enough time to prepare for the bidding and related funding.

More specifically, domestic licensing can follow three options:

– separate tenders for each platform;
– competitive bidding from different platforms;
– a combination of both.

If it chooses the second option (i.e. competition between platforms, or multi-platforms tenders), the League must however offer an adequate number of packages of equivalent value, each including a comparable number of "premium" events.

Unlike the prior, less regulated licensing system, the Melandri Decree reserves the right to bid to media operators in possession of the required legal qualification and to independent intermediaries. Accordingly, media operators may only exercise the licensed audiovisual rights on the platform for which they are legally qualified, and, moreover, they are banned from sublicensing, in whole or in part, such rights to any third parties. The new legislation foresees a three years' maximum duration of the licensing agreements, but it requires the League to exercise its limited discretion on the term of audiovisual rights licensing in consideration of the need to promote an open and competitive market. If any of the broadcasting rights remain unlicensed, the host clubs are free to sell them individually.

As mentioned, the League can market the audiovisual rights through an intermediary, appointed pursuant to a competitive procedure. For the years 2010 to 2016, the sports rights agency, Infront Italia, has been awarded the exclusive right to market the Serie A audiovisual rights, under a contract whereby the Agency guarantees a minimum revenue to the League of no less than 900 Million Euros. It is then the intermediary's responsibility to submit the guidelines for approval by the League; to define the standards of production; and to organize the tendering procedure.

Each Club is responsible for the production of home games; however, only two out of twenty Serie A clubs have decided to produce their events, whereas eighteen clubs have appointed the League, who in turn has assigned the task to Infront Italia.

The Decree provides some general rules and principles for the international licensing of audiovisual rights, especially concerning the availability of events to the Italian communities residing abroad.

The distribution of revenues

Revenues deriving from centralised licensing must then be allocated among the clubs according to the criteria set forth by the Melandri Decree. Without doubt, this is the most controversial and sensitive aspect of the system created by the legislator. In keeping with the premises of the Law, such distribution must eventually take some from the few rich and give it to the majority of the underprivileged. One of the main criticisms raised by top clubs, like Juventus FC, AC Milan and FC Internazionale Milan and the new entry of late SS Napoli (while former superpowers like AS Roma, SS Lazio and AC Fiorentina have downsized both budgets and ambitions over the last decade), is that, while the Law focuses on the Serie A championship and the need to foster domestic competition, big Italian clubs are fighting in the UEFA Champions League arena, where they face competition from clubs of similar size, status and ambitions.

As of the sporting season 2010-2011, the revenue sharing system is based on the following terms:

– **40%, in equal parts** among all clubs of the Serie A;
– **30%, based on conventional "television audience"** assigned to each club (5% of which is determined according to the population of the club's town, whereas the remaining 25% depends on the number of supporters, to be determined through polls carried out every three years by three independent agencies appointed by the League);
– **30%, based on sporting results** (5% of which on the basis of the ranking of the prior season; 15% on the basis of rankings over the previous 5 seasons; 10% on the basis of the club's history, that it is to say, sporting results achieved since 1946).

The 10% share based on the "glorious past" is an Italian oddity, if we compare the other collective selling systems, like Germany, England and France. The anomaly stems from the peculiar context of Italian professional football, where the TV revenues' share of club's turnover is far greater than that of German and English clubs. With comparatively far lesser revenues deriving from gate receipts and merchandising, TV money is the only pot from which top clubs should be compensated from the loss deriving from collective selling. Similarly, the legislator might have intended, but failed to state, that the "television audience" criteria would also concur to mitigate the financial shock suffered by the elite clubs. In particular, the "fan-base" element thereof was supposed to assist Juve, Milan and Inter in this respect. At least, this is what the latter have fiercely maintained amid a series of claims, disputes and diplomatic wars that broke out relating to the interpretation of

7 The European Commission on UEFA (2003); Bundesliga (2004); and the Premier League (2006).
8 Autorità per la Garanzia delle Comunicazioni.
9 Autorità Garante della Concorrenza e del Mercato.

the criteria to determine the number of supporters. According to five top clubs (Juventus FC, AC Milan, FC Internazionale Milan, SS Napoli and AS Roma) only the "colours of the heart" would have to be considered, as there is only space for one team in a football fan's heart; whereas all other clubs insisted that polls should also ask about the second club, mostly local people would "sympathize" with. The quarrel paralyzed the distribution of the last batch of TV money (worth about 100 million euros) for months during the 2010-2011 football season, until finally an overall settlement was found within the Serie A League at the beginning of the current 2011-2012 season.

The allocation of the revenues under the three partitions described above, is net of an aggregate **10% solidarity contribution**, which the Melandri Decree reserves to lower professional leagues (6%) and to grass-root football, minor sports and youth training (4%). More specifically, 6% is dispensed directly by the Serie A League to Serie B and Lega-Pro *(Mutualità per le Categorie Inferiori)*; whereas 4% of the revenues is granted to a Foundation *(Fondazione per la Mutualità Generale)* instituted by the Melandri Decree for the sole purpose of managing and distributing such 4% "General Solidarity" contribution to "the youth development, the development of the amateur sector, the security of the sports infrastructures and other sports disciplines different from football" [10].

The (difficult) start-up of the centralised licensing system

On the entry into force of the Decree, Sky, Italia, the main pay-TV broadcaster, filed a complaint with the European Commission, challenging the monopoly created in favour of the League, which, according to Sky, created a disparity between satellite and digital pay-TV operators. Just about a year later, Sky and the League were, in turn, subject to a series of (mainly unsuccessful) claims for anticompetitive behaviour, which were filed by the Italian pay-television Conto TV both before the Italian Antitrust Authority and the Court of Milan. Conto TV contended, in particular, that the top rights package "Platinum Live" was tendered under conditions which did not grant equal chances to all competitors. On 22 July 2009, the Italian Antitrust Authority opened a formal investigation against the League for abuse of a dominant position with respect to the bidding procedures for the pay-TV broadcasting rights for the Serie A seasons 2010-2011 and 2011-2012. The civil claims and related antitrust proceedings left the rich 1,15 billion euro per-season Serie A contract between life and death for a long time shortly after it was signed. The Authority's investigation terminated in January 2010, following the approval of a list of undertakings by Sky and the League to ensure transparent and fair conditions for the access of any interested operator to the satellite pay-TV platform [11]. However, the Authority's approval was appealed by Conto TV, seeking both invalidation of the administrative decision and an interim injunction aimed at preventing the League from carrying on the tender procedure. For a while, Conto TV gained the upper hand, obtaining revocation of the Antitrust Authority's decision, but soon after Serie A and Infront were successful in the legal battle before the Court of Milan, which refused to grant the injunction requested by Conto TV. The matter was then sorted out thanks to a settlement with Conto TV and the formation by the League of new packages, which, pursuant to the Melandri Decree, were approved by both the Italian Communication Authority and the Antitrust Authority.

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Conclusion

Italy's statutory conversion to collective selling is clearly in line with the EU institutions' orientation [12]. As mentioned in the introduction of this article, centralised licensing and distribution of revenues pursuant to pre-defined criteria are aimed at ensuring a fair return for lower-ranking clubs, resulting in a sensible reduction of the gap between the top and bottom Serie A clubs. This is going much in the same direction as most of the main European leagues, with the notable exception of Spain, as well as the UEFA model. However, the Italian Legislator was rather optimistic about the self-regulation capabilities of Serie A, leaving many provisions either incomplete or open to interpretation.

The new system went through two troublesome years, during which most of the blank spaces left by the Law were eventually filled by agreement among the Serie A clubs. Ambiguous legal provisions are slowly being clarified by judicial decisions or by the moral persuasion exercised by the Italian Football Federation, acting as an arbiter among different layers of professional and amateur football.

Indeed, the last big battle will be fought during the next months over the implementation of statutory provisions requiring allotment of Serie A's solidarity contribution among lower football leagues and other sports.

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10 Art. 22-24 of the Melandri Decree.

11 Antitrust decision nr. 20687 of 18 January 2010.

12 Decisions of the European Commission dated 23 July 2003, 19 January 2005 and 22 March 2006. Moreover, see the White Paper on Sport of 11 July 2007, and the ensuing Resolution of the European Parliament of 8 May 2008 on the White Paper on Sport.

Kick corruption out of football!

by Keith McGarry [1]

Introductory remarks

According to Ronald Noble, General Secretary of Interpol:

> *"We have to do everything in our power to keep the sport (football) clean. Corruption in sport is so damaging..."*

Sepp Blatter, FIFA President, would seem to agree, when at the launch of the landmark agreement between FIFA and Interpol to tackle match fixing and betting scandal (9 May, 2011) he stated:

> *"FIFA would lose all credibility if fans no longer believe in what is known in Great Britain as the beautiful game. It's not enough to go against corruption on the field of play. We also have to look at those who try to destroy our game."*

At the time of writing (mid July 2011), this would appear to be true, as arrests have been made in Turkey – members of both Fenerbahce and Besiktas – and 46 footballers in South Korea implicated in their "K league". How strange it is that the World Governing Body of Football seeks to address corruption in such issues as betting and match fixing, yet leaves severe doubt as to its determination to "kick corruption out of football" with their handling of allegations of corruption within their own ranks during the bid process for hosting the 2018 and 2022 FIFA World Cup. Can an internal enquiry ordered by a president himself accused of acts of corruption satisfy the sport's stakeholders that the game will be cleaned up? It is opined not and, if FIFA were itself to apply the simplest tests of governance to its own organisation, then its own health would be deemed critical and self-medicating may not return it to the good health required by its own stakeholders. Lessons should be learned from the well-documented problems of other governing bodies before outside intervention is used to address the issues.

It is noted that presently the "whistleblower" from Qatar has now withdrawn their allegations of corruption regarding its successful bid because they had been made "to get their own back". FIFA must realise that perception as to how they deal with corruption allegations is key. The withdrawal does not solve the problem. The British newspaper The News of the World found that pressure from sponsors (Sainsbury's and Boots) over wrongful acts of phone hacking brought about its demise after 168 years of publication. The same scandal brought political pressure and the appointment of Lord Justice Leveson as head of an Independent Inquiry. In the absence of an Independent Inquiry into FIFA (and dependent on the outcome of FIFA's own Ethics Committee report (due 22 July 2011)), will Coca-Cola and Adidas threaten to withdraw their money from FIFA's 6 sponsors model? David Mellor, the former Chairman of the British Football Task Force, has urged FIFA to completely reconstitute itself and the German lawyer, Gubter Hirsch, when resigning from FIFA's Ethics Committee in January 2011, stressed the importance of perception when saying:

> *"The events of the past few weeks have raised and strengthened the impression that responsible persons in FIFA have no real interest in playing an active role in resolving, punishing and avoiding violations against Ethic Regulations in FIFA."*

The present issues revolve around article 16 of FIFA's Ethics Code. The perception of "out of sight, out of mind" remains within FIFA with the world's media continually associating the words scandal, tainted or corrupt with the Governing Body. When Jack Warner (Vice President) resigned, FIFA issued a statement that all Ethics Committee procedures against him had been closed and the "presumption of innocence is maintained". Yet, on 22 June 2011 that same organisation, through it's Ethics Committee, found "comprehensive evidence" that Warner (and Mohamed Bin Hammam) colluded in the payment of bribes. In such circumstances, Blatter's protestations of "what crisis?" ring somewhat hollow. If nothing else, in my view, the crisis relates to FIFA's perception of being associated with corruption and its loss of trust must be addressed.

So, what needs and can be done?

Addressing the issues

The essence of sport is oft quoted as being "the level playing field". It is, indeed, at the core of both the playing and governance of any sport. FIFA, if they are to rid football of corruption, must provide clarity to those involved. Giving the perception of accountability and transparency will, in turn, breathe confidence back into the beautiful game. FIFA must undergo close scrutiny to rid itself of any suspicion of corruption and avoid the perception of a distorted playing field at the core of its governing structure. The simple tests, against which FIFA should measure itself, will clearly show that Sepp Blatter is wrong in his belief that FIFA has only difficulties, not a crisis.

FIFA, whilst the world governing body of football, must ensure that its own governance is in order if it is to aspire to "kick corruption" out of the sport. Some appear to view the game as too big, but FIFA must revert to the very basics that all governing bodies should adhere to. The size of the task faced can been seen clearly when even extracts of simple advice to governing bodies produced by The Developing Governance Group in Northern Ireland and entitled *Good Governance – a Code for the Voluntary and Community Sector* is set against FIFA's behaviour for analysis.

> *A governing body should be accountable. A board should ensure the delivery of its objectives and set its strategic direction and uphold its values. It should monitor the activities of the organization to ensure that they are keeping with the founding principles' objects and values.*

The question must be asked: to whom is FIFA accountable? An Ethics Commit-

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tee is due to report, but who appointed this Ethics Committee and how they were appointed certainly seems unclear as suspended Vice President Jack Warner describes them as a "Kangaroo Court"? Indeed, if Mr Warner's assertions are accepted, that is: "The guys were handpicked by Blatter ... They came premeditated, they weren't prepared to listen ..." then not only is their appointment shrouded in mystery, so too is their function and impartiality which would clearly run contrary to the rules of natural justice – in particular, the need for complete independence and impartiality. What governing body gives the perception of being untouched by corruption when the two candidates for the recent FIFA presidential election are each accused? One is cleared and stands; whilst the other can't even avail of an appeal prior to the vote and withdraws. FIFA must realise the complete lack of perceived transparency with its Ethics Committee as currently constituted.

Very clear procedures must be put in place with the input of independent adjudicators to ensure fair play. The appointment of a committee and/or an inquiry ordered by a president touched by allegations will not suffice – these allegations against Blatter not only touch the present issues but date back to allegations of bribery at his election as president in 1998. Clear guidelines and mechanisms for appointment from a known panel must follow. The guardian of the game can no longer be aged long standing committee men who are perceived to be susceptible to outside influence – 8 of the 24 Executive Committee members have been accused of corruption. Much could be learned from the International Olympic Committee (IOC) following the Salt Lake City scandals of 1998-1999. Part of its reform saw retired athletes being brought into the Governance Arena. The same could be done in football. There are plenty of retired "elder statesmen" who in the global game could play a role and in whom the future health of the game could be entrusted.

The next guideline to be set against FIFA's perceived image is that:

> *A Board is collectively responsible and accountable for ensuring the organisation is performing well, is solvent and complies with its obligations.*

At present, FIFA and its Executive Committee are perceived as one individual with excessive power and tenure heading up a 24 man committee of whom 8 have had allegations of corruption made against them and 2 of whom were removed and prevented from voting in the latest scandal surrounding the allocation of the 2018 and 2022 World Cups: Reynald Temarii of Tahiti and Amos Adamu of Nigeria. In June 2011, Sepp Blatter was returned unopposed as President. Unopposed for a fourth term due to the perception that his rival was "removed" from the election before it took place. The vote took place despite England's protest to postpone the election (receiving limited support), but indicating a sense of inner discomfort within FIFA.

Blatter and the Executive Committee must address this issue immediately and be very clear in putting football before self. Blatter says he is the man to reform FIFA despite only seeing the issues as difficulties and he also being tainted by corruption allegations. If he and the Executive Committee are to be the vehicle of reform, then they must prove themselves untainted. An independent inquiry into the governance of FIFA must be ordered to examine the past conduct and pass a clean bill of health so reform which instils confidence can ensue. Such an inquiry must be granted extensive investigative powers and be given the right to compel the attendance of witnesses. If FIFA has nothing to hide, it has nothing to fear. It is not sufficient for FIFA to cease investigations into the Qatar bid allegation on the basis that the whistleblowers allegations have been withdrawn and, therefore, no evidence is now before them. The scent of scandal still fills the air and must be addressed before moving on.

Obviously, if findings of impropriety are made, then those individuals must be removed – not sanctioned, removed. Zero tolerance is needed to allow FIFA to operate with a clean bill of health. Examination must then be made with regard to the composition, tenure and power of the President and Executive Committee.

Sepp Blatter has now headed FIFA for 13 years and has now entered his fourth term as President. Good governance dictates regular reviews of leadership and examination of age profiles. At 75, Blatter claims to see no crisis despite, amongst others, British sports minister, Hugh Robertson, stating: " ... FIFA's bigger problem is that it seems to be losing all moral authority." The belief of no crisis is the thinking of a man comfortable in his own role and seemingly safe from challenge (again perception). This is the view of a man who suggested women wear tighter shorts and lower necklines! Like the US and Irish Presidency, FIFA should dictate that a finite term (or two terms at most) be allowed for a President and a similar provision for the Executive Committee, which would dictate a regular changing of the guard who are charged with the governance of the game. As Michel Platini, the President of UEFA, acknowledges that "we have to protect the game because it has become too big." The press – focusing on the perception of corruption – says of FIFA:

> *"Football is too big for its administration to be left to empire builders and placemen, manifestly unqualified for the job."*

Surely, finite terms and regular turnover would reduce the likelihood of individuals being vulnerable to bribes and being able to empire build?

The constitution of the Executive Committee must also be addressed to avoid the perception of empire builders "on the make". Accordingly to Platini:

> *"Many former sportsmen are coming into National Associations and many will come to take their place in the institutions of every sport. This will be the future."*

And so, like every good board of directors of a commercial enterprise, and football is a business, FIFA should target its recruits and ensure diversification of expertise to lead it out of this crisis. Clearer accountability must be evidenced with checks and balances in place and highlighted so there is no question of individuals proceeding unchallenged. Why can votes not be published so transparency illuminates the process rather than let a cloak of secrecy surround it? Should more than just 24 executive committee members actually vote thereby making it more difficult to corrupt and distort the system as a whole?

As stated in the above quoted guideline, such accountability is necessary to ensure solvency. *The News of the World* found to its cost that without advertisers/sponsors it could no longer sustain itself. Coca-Cola and Adidas have already expressed their concerns at FIFA's predicament. As the Coca-Cola spokesman recently stated:

> *"The current allegations being raised are distressing and bad for the sport. We*

have every expectation that FIFA will resolve the situation in an expedient and thorough manner."

In other words: "It's only a suggestion but bear in mind who is making it!" Adidas expressed similar concerns:

"The negative tenor of the public debate around FIFA at the moment is neither good for Football nor for FIFA and its partners."

FIFA cannot afford to ignore these warnings. The jewel in the FIFA crown is the World Cup and brings with it untold riches by way of broadcast rights and sponsorship. According to Hartmut Zastrow, CEO at Sport+Markt:

"FIFA World Cup is the biggest sporting event in viewership and interest. It matters across the globe".

And so if FIFA is not prepared to put in place the necessary checks and balances to rid itself of the perception of corruption, the stakeholders may force its hand. Reference has been made to FIFA's six sponsor model of maximising revenue from "blue-chip" partners, but if the board is tainted the sustainability fails. Football should also remember that it is an Olympic sport and falls under the umbrella of IOC governance. How quickly would FIFA reform if the IOC were to flex its muscles? Before feeling the pressure of such external threats, FIFA must maintain and regularly review the organisational system of internal controls and act prudently to protect the assets and property of the organisation. There can be no more valuable assets than the worth of the sport as witnessed by the bidding process itself.

England's unsuccessful bid to host the 2018 FIFA World Cup has been well publicised and considerable sums of money spent. As there was also in the unsuccessful bid by Australia (estimated at US $ 47.7 million) for the 2022 tournament. Criticism and calls for reform came from Mark Abib, the Australian Sports Minister, which included demands for FIFA to reform along IOC lines post Salt Lake City (a point to be referred to later). But what if FIFA were to be investigated as regards the bid process and the corruption allegations were to be proved? To use a commercial company analogy, would that lead to a scenario where effectively the Board of Directors had acted outside their powers and the Company had therefore acted Ultra Vires? Would this not lead to potential actions by the unsuccessful bidders and again expose the governing body to the risk of financial exposure? As evidenced by the British Boxing Board of Control after the Michael Watson litigation, this can prove catastrophic and threaten the very existence of the body running the sport.

Whilst not wishing to suggest to give advice to FIFA, are there not several company strategies that could be utilised? Most will be familiar with the corporate concept of executive directors and for this exercise it would be useful to compare FIFA's Executive Committee to those directors. In the board room these directors do not enjoy "carte blanche" and are subject to the checks and balances of non-executive directors who, in accordance with good governance practice, are brought in from their field of expertise to ensure the company adheres to its corporate objectives. Reference has been made to guardians of the sport possibly coming from retired athletes and it could be argued that even if they don't "progress" to the Executive Committee via their international federation they (via reform) could be appointed from outside of FIFA to perform this non-executive role. But is this enough? It is opined not, as football and its governance are not just about a sport. It may well be that the same principles of governance apply from the smallest club in a minor sport to the largest governing body, but football is different. It is supersized; indeed reference has been made to it growing too big, even Sepp Blatter has acknowledged it as a product! Football is a multi billion global business and well-meaning non-executive board members would need and deserve support.

FIFA for various legal and logistical reasons is based in Switzerland, in fact in the Germanic side of Switzerland, and would be predisposed to certain corporate German ways of thinking. As such, therefore, the concept of a supervisory board with powers over the Executive Board may prove an alternative proposition by way of reform to both the outside stakeholders who would receive comfort from the control element of an independent board, but also from those within FIFA who see themselves leading to and contributing to the necessary reform. Such a concept may assist Sepp Blatter in believing, in his view, that "I think FIFA is strong enough that we can deal with our problems inside FIFA."

The perception of corruption – whether proven or otherwise – is at the heart of FIFA's problems. It has been shown that even without corruption FIFA is lacking in several basic areas of governance, but the final guidelines put pay to the notion that there are no problems.

Board members should receive no personal benefit

In light of all the allegations, reform in this area speaks for itself. No gifts, no benefits in kind, no trips to visit bid nations and no suggestion of board members enquiring as to the purchase of TV rights or "come and tell me what you have got for me" (a claim made by Lord Triesman about Brazilian Teixeira – which he denies). A bid must be based solely on its technical content and merit. If that were the case, quite how a nation who has never competed in a World Cup Final and proposes to host such an event in 42° of heat is successful, is puzzling to say the least! It is of note that, whilst supporting the bid, Michel Platini called for the tournament to be moved to Winter. If a bid is based on purely technical merits, then there can be no perception of outside influence either by way of allegation of corruption influence or the influence of celebrity or royal endorsement. Such a course would go a long way to address the issue of perception.

Directors are to declare a potential conflict of interest. Much has been made of the potential threat of the IOC flexing its muscles, but what if members of FIFA belong to the IOC? They do! Sepp Blatter and Issa Hayatou – no less. Independence cannot allow for such cross pollination and a way for FIFA's representation to the IOC must be examined.

If it is conceded that FIFA does indeed have a perceived problem of corruption, then it is quite ironic that the body who may provide the roadmap to recovery was itself at one time rocked to the core by corruption. The IOC following the awarding of the 2002 Winter Olympic Games to Salt Lake City was accused of corruption in the bidding process with gifts of scholarships being offered to the children of IOC members and other gifts including the promise of lands being made. The scandal proved to be one of the biggest in Olympic history. Other similarities with FIFA's present predicament also arose. An internal inquiry was ordered to ad-

dress the problem. President Samaranch appeared to provide a strong response by asking Dick Pound to chair a formal inquiry commission. This was not in itself effective and further far-reaching reforms ensued to the point where now, following the bidding process for the 2018 Winter Olympics, British Sports Minister, Hugh Robertson, has commented:

> *"[there wasn't] a suggestion from anyone that there is anything other than a fair contest... FIFA needs to get to that point."*

That is, a point where the perception is one of zero tolerance to corruption. (Post Script – reference has been made to zero tolerance following the life ban on Bin Hammam, but the perception of corruption remains in the absence of root & branch reform.)

It is of interest to note the divergence of attitudes between FIFA and the IOC in the wake of the present scandal. We were told, following the BBC Panorama programme, by FIFA that the matter was closed. In light of their reaction to the withdrawal of the Qatari bid representative's evidence (i.e. no evidence now before FIFA, therefore, no need for investigations), there would appear to be an attitude of "out of sight, out of mind". Contrast that with the IOC who issued a statement following the programme asking for evidence to be sent so that its Ethics Committee could open an investigation. The IOC stated it had a "zero tolerance" to corruption. As stated, FIFA's reform may be forced by those outside the family of football, such as the IOC, but that is not to say they are unwilling to assist. Jacques Rogge, IOC President, says:

> *"We have been through this and the IOC came out as a better and more transparent organisation. I hope that happens to my friends" (in FIFA).*

If this is the place that FIFA must reach, they must examine how the IOC reached the destination of "perceived transparency and zero tolerance to corruption". The first thing that the IOC recognised in their recovery was that there was a problem in their bidding process. They recognised that pressure could and would come from their commercial partners with Samaranch emphasising the "importance of corporate support to the Olympic movement" and very firm moves made to communicate directly with the stakeholders so that they could be reassured as to the progress of reform. FIFA would do well to follow such a lead and address what clearly are concerns from its major sponsors, Coca-Cola and Adidas, over the continuous negative press coverage.

The Salt Lake City organising committee admitted to breaching the rules, but one of their trustees, Ken Bullock, stated:

> *"If you want something bad enough, you stretch the boundaries."*

In other words, rules were bent to achieve an objective. This behaviour was found wanting, so FIFA should acknowledge this and, instead of ignoring the issue and pretending that it does not exist, they should investigate the comments that Qatar bid's deputy chief executive is alleged to have made in a document revealed by the British newspaper The Sunday Times, that:

> *"if FIFA regulations prevent these initiatives then a way has to be found to do these under a different name (e.g. through the embassy or as the state of Qatar)."*

FIFA should act quickly to avoid the possibility of legal action by losing cities' bid teams. In FIFA's case, Australia, and in the IOC's case, Quebec City.

The IOC learnt that communication was vital during the Salt Lake City crisis, Francois Carrard and other IOC directors formed a crisis review committee to daily review each day's media stories and address the stakeholders. A crisis communication team was set up from Hill and Knowlton (PR advisors) and dedicated information lines were set up in both London and New York. Perhaps in the midst of such an avalanche of negative media headlines, FIFA should open their lines of communication and try and readdress the seemingly never-ending negative perception. Further, Samaranch ordered a special session of the IOC (March 17, 1999). Before expelling six members he acknowledged:

> *"Now the world expects us to be more open – the word of current choice is transparent – and more accessible."*

A special IOC Ethics Committee was appointed with five members from outside the Olympic movement. Could such a panel in FIFA, if set up properly, be described as "premeditated, weren't prepared to listen" or "hand picked by Blatter" as per Jack Warner's assertions?

Samaranch ordered the IOC 2000 commission to be set up to include all the different IOC stakeholders in the Olympic movement. Their mandate? To study just how the IOC should reform. What a contrast to Blatter wanting all issues addressed internally. Of 55 recommendations, all were accepted to include age restriction on new members (80-70), members of IOC Athletes Commission co-opted leading to 15 former athletes joining the IOC including gold medallists' Sergiei Bubka and Alexander Popov and fixed terms for members.

Further scrutiny by the US Congress, following the reforms, questioned the power and independence of the IOC's Ethics Commission. It received a clean bill of health. David D'Alessandro (Chief Executive of John Hancock), the biggest critic, having described the IOC at one stage as radioactive and threatened to remove the Olympic rings from NBC airtime, was transformed into one of it's supporters:

> *"We made no secret of the fact that, in order for the IOC to regain our confidence, as well as that of the public, it had to become a more democratic, transparent and accountable institution ... it's members listened to voices for change from inside and outside the organisation. The IOC leadership deserves credit for this progress."*

FIFA can adopt and follow such a road map for change, but it must first recognise the problem. The IOC recognised that people's trust had been broken and that sponsors and stakeholders had an important say in reform. Not content with rebalancing the perception, the IOC went on to review the process. Hill and Knowlton (PR advisors) were tasked to enquire: "Why the media engaged in a feeding frenzy of the IOC". The lessons learned should be used for FIFA's benefit:

1 The Olympics (and the FIFA World Cup) are more than just a sports event. Anything that threatens its integrity impacts the brand.
2 The IOC was previously an unknown entity and was a private and inaccessible body.
3 Communication management was a challenge.
4 Communication changes i.e. social media could fuel the rumour mill.
5 Politicians can use scandals for their own advancement.

With such lessons learned, the IOC (and FIFA) can adopt their responsive attitude accordingly to try and limit damage in the first place and plan for reform.

Concluding remarks

If FIFA is really to "kick corruption out of football", it must look at itself inwardly and scrutinise and overcome the huge problem of giving the perception of a corrupt organization. Sepp Blatter may wish reform to be confined to coming from within FIFA, but it is opined that that is a futile hope without the input of outside agencies. FIFA must first recognise the problem and then have an independent body identify the exact nature and source of that problem. Once these issues are identified, FIFA can then set about reforming and ridding itself of corruption from within.

Setting up these mechanisms will perhaps allow FIFA to the belief that it is addressing its issues; however, it is difficult – if not impossible – to know your own perception by others, and so FIFA must rely on outside sources to ensure that it not only deals with corruption, but more importantly deals with the perception it gives of being itself corrupt. In the absence of such reform, those potential allies (i.e. the stakeholders) may prove to be FIFA's undoing.

So, FIFA must move to reassure those commercial partners and, in turn, the general public who, in effect, fund the game. The beautiful game to survive, both as a sport and commercial entity, must ensure uncertainty of outcome and a level playing field not only with the participants but also – and perhaps more importantly – with those who govern and regulate the sport.

Now, in a time of crisis, is the ideal time to kick corruption out of football, once and for all for the good of the game, starting right at the very top!

"UEFA's financial fair play rules: it remains to be seen"

by Max Eppel [1] & Xabier De Beristain Humphrey [2]

Introduction

This article is intended to be a guide and commentary on UEFA's new *Club Licensing and Financial Fair Play Regulations 2010* ("the Regulations"). The reader will no doubt appreciate that because they have not yet been applied there is very little in the way of precedent on which to draw, hence the second part of the title: "it remains to be seen". We have divided the article into several manageable sections which we hope will prove a useful starting point for practitioners and laymen alike, with the anticipation being that a follow-up article will be provided for GSLTR once the Regulations have begun to have their effects felt throughout Europe.

What are the Regulations & why were they enacted?

Put simply, the Regulations are the result of football's inability to live within its means. The Premier League ("the League") reduced its net debt from £ 3.3bn to £ 2.6bn in 2010 (mainly through the conversion of net bank borrowings into soft or other loans – essentially moving the same debt around), but nevertheless such figures are startling on the basis that if the richest clubs are so poor at keeping their house in order how do the clubs in lower leagues manage it, if at all?

European club football has been crying out for leadership in this critical area. Sadly, in England, it took the well-documented fall of Portsmouth FC into administration before the Premier League and Football League enhanced their rules to allow the League to exert greater control over the finances of the member clubs. These new rules now permit the League to:

1 ensure that member clubs are not overdue with any debts to Her Majesty's Revenue and Customs – the UK tax authority ("HMRC") or other member clubs or clubs;
2 apply greater scrutiny over new owners;
3 require member clubs to submit future financial information to ensure their viability as a going concern. The penalties for non-compliance are strict – such as a transfer embargo – and so far the clubs seem to be abiding by the new rules. Admittedly, we are at a nascent stage of their implementation and it remains to be seen whether these changes will be sufficient or whether clubs, especially those outside of the Premier League, will find new and creative ways to run themselves into the hands of the accountants, HMRC and Receivers.

All of this needs to be viewed in the context of HMRC's ongoing challenge to the "Football Creditor" rule which essentially permits clubs to prioritise their debts by paying off members of the football family before other creditors, such as HMRC.

It is deeply unsatisfactory that clubs, if left to their own devices, seem on the whole only capable of running themselves outside of the commercial, fiscal and, occasionally, sporting reality with which they are faced. Nevertheless, if UEFA does not act then who should? And they of course hold the key to everything – lucrative TV deals for the Champions' League. Article 14 provides as follows:

> *"Clubs which qualify for the UEFA club competitions on sporting merit or through the UEFA fair play rankings must obtain a licence issued by their licensor according to the national licensing regulations, except where Article 15 applies."*

UEFA's hope is that if clubs know that they can work hard all season to qualify for a UEFA competition but are then refused a licence to play in it due to financial mismanagement, then they will get their houses in order to avoid such an outcome that is so detrimental to them.

Hence the development and promulgation of UEFA's new Regulations in time for the 2013-2014 season. As the guardian of the European game it is quite correct that Michel Platini's organisation has reacted in a positive and swift manner to ensure the continued viability of the sport. Despite Nyon being very close to Zurich, UEFA's ability to recognise shortfalls in their game plan and take action without any allegations of corruption seems completely opposed to the recent allegations faced by FIFA.

At this stage it is key to note that the Regulations do not actually go towards debt, nor do they place a cap on it. Any accountant will tell you that debt even of itself is not a bad thing so long as it is managed properly.

Why, then, were they enacted? Article 2 defines the Regulations' objectives as follows:

> *"1 These regulations aim:*
> *a to further promote and continuously improve the standard of all aspects of football in Europe and to give continued priority to the training and care of young players in every club;*
> *b to ensure that a club has an adequate level of management and organisation;*
> *c to adapt clubs' sporting infrastructure to provide players, spectators and media representatives with suitable, well-equipped and safe facilities;*
> *d to protect the integrity and smooth running of the UEFA club competitions;*
> *e to allow the development of benchmarking for clubs in financial,*

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sporting, legal, personnel, administrative and infrastructure-related criteria throughout Europe.

2 Furthermore, they aim to achieve financial fair play in UEFA club competitions and in particular:

a to improve the economic and financial capability of the clubs, increasing their transparency and credibility;

b to place the necessary importance on the protection of creditors by ensuring that clubs settle their liabilities with players, social/tax authorities and other clubs punctually;

c to introduce more discipline and rationality in club football finances;

d to encourage clubs to operate on the basis of their own revenues;

e to encourage responsible spending for the long-term benefit of football;

*f to protect the long-term viability and sustainability of European club foot*ball."

What UEFA are saying, in essence, is that if clubs do not get their financial houses in order then they will not get a licence to play European football, thereby missing out on a crucial source of revenue and the ability to attract better players and more fans to their "brands".

Some key Regulations

An overview of the significant Regulations is as follows: they are divided into four sections:

– General provisions (Part I);
– UEFA club licensing (Part II);
– UEFA club monitoring (Part III);
– Final provisions (Part IV), which are not relevant for the purposes of this article.

The commentary that follows is by no means meant to be exhaustive, but to act as a synopsis.

We have already covered the key elements of Part 1 (General provisions). Part II can be summarised as follows.

UEFA club licensing (Part II)

– The UEFA Member Association (The FA, for example) shall govern the club licensing system and police any breaches (articles 5(1) and 4).
– The Member Association shall also establish at least two decision making bodies known as the First Instance Body and the Appeals Body (article 7(1 & 2)).
– A catalogue of sanctions for non-compliance shall be stipulated by each Member Association, but guidelines include a caution, a fine, the obligation to submit further evidence or fulfil certain conditions within a certain period, and to have clubs submit to the local FA's disciplinary measures as previously enacted should there be a breach (articles 8(a & b)).
– The core process is a key component of the entire procedure as it sets out what information clubs need to submit and a timetable in order to comply (article 9).
– Assuming that the club has been granted the licence, then it can still be withdrawn if the club, for any reason, becomes insolvent or enters administration or if the conditions of issue are no longer in place; or if the club violates its licence (article 14).
– The Regulations then go on to list the minimum criteria which a club must satisfy in order to be granted a licence. On the whole, articles 17 to 41 inclusive can be ignored for present purposes as they set out what is needed in a club's sporting, facilities and personnel infrastructure.
– Articles 43 to 52 provide the relevant legal and financial criteria. It is the financial criteria that provide the most interesting reading. Article 46 provides that the club must provide an overall group structure setting out the legal structure and which entity will be reporting to UEFA. This, presumably, is a measure to counteract growing disenchantment amongst fans, and indeed local Leagues and FA's, not knowing the identity of the beneficial owner (not to mention the need to counteract any possibility of the club being used for fraudulent purposes).
– Independently audited Annual Financial Statements must also be provided by the clubs under article 47.
– UEFA have shown themselves to be resourceful and far-sighted with articles 49 to 52. They provide that clubs must prove that, as at 31 March each year, they do not owe any other clubs money from outstanding transfer fees or solidarity contributions; or for that matter to the relevant social/tax authorities: finally a letter must be sent to The English Football Association (the "FA") forewarning them of any *"events or conditions of major economic importance [that] have occurred that may have an adverse impact..."* on the club's financial position. This early warning system, combined with article 52's obligation to provide future financial information to demonstrate the club can continue as a going concern at least until the end of the licence period, could prove key in heading off any potential act of insolvency and also force clubs to adhere more carefully to their fiscal policies.

UEFA club monitoring (Part III)

The key article in this section is without doubt the break-even requirement to be found in article 58. It will apply for the first time to clubs' financial reporting periods ending in 2013, which means that a club's reporting period which ends on 1 July 2012 will be assessed under the Regulations to determine whether a club is eligible under the Regulations to participate in UEFA competitions for the 2013-2014 season due to the 3-year monitoring period stipulated in article 58.

Article 57 provides two exceptions for clubs to avoid meeting the break-even requirement:

– If the club qualifies on sporting merit and is granted special permission under article 15 (essentially, if the club is below the top tier and, because of that, has not been subject to these Regulations. In such a case the club's FA may apply for special permission to be granted).
– Clubs with income and expenses below € 5m.

Where the authors believe that there is scope for sports lawyers to advise come in the definitions of relevant income and expenses in article 58:

– Article 58(1) states that relevant income does not include *"any non-monetary items or certain income from non-football operations"*.
– Article 58(2) states that relevant expenses do not include "*...expenditure on youth development activities, expenditure on community development activities, any other non-monetary items, finance costs directly attributable to the construction of tangible fixed assets, tax expenses or certain expenses from non-football operations"*.

It is quite possible that *Manchester City FC's* lawyers read these articles and decided to test the boundaries with the recent £ 400m deal to sell their stadium's nam-

ing rights to Etihad Airways. Certainly, this has raised more than a few eyebrows at rival clubs in the Premier League even prompting *Liverpool FC* to urge UEFA to look into this "odd" deal.

The break-even requirement is calculated along the basis set out in Annex X of the Regulations and is based upon the 3-year aggregate difference between the club's relevant income and its relevant expenses. If the relevant expenses are less than the relevant income, then the club has a positive break-even result and will meet the requirement. If the aggregate break-even result is negative, then the requirement has not been met. Article 61 provides an "acceptable deviation" of € 5m per club, but only if this deviation is entirely covered by unconditional fund injections from equity participants and/or related parties.

- For 2013-2014 and 2014-2015 the aggregate break-even deficit of € 45m is permitted provided the above stipulation is met (that it's covered by the owner).
- For 2015-2016, 2016-2017 and 2017-2018 the amount is € 30m with the same stipulation.
- UEFA will set a new lower level in advance of the 2018-2019 season.

The practical effect of this ruling is that clubs are being forcibly weaned off cash injections from wealthy owners. This can only be beneficial because clubs need to be taught not to rely on private individuals and their caprices for their financial viability. One needs only look at the story of Romanian club *Unirea Urziceni* whose owner, Dumitru Bucşaru, recently lost interest thereby forcing the club's dissolution to see the perils of such a business model.

Commentary

Are the Regulations as promulgated going to be effective?

Through the Regulations, UEFA have taken bold steps to try and rein in the excessive spending of certain clubs. The Regulations will provide UEFA the legal framework with which they can bar those clubs that persistently overspend from dining at European football's top table: the UEFA Champions League (and to a lesser degree the UEFA Europa League). When discussing these two parallel competitions the following distinction should be made. In financial terms, the UEFA Champions League is the equivalent of a *menu degustation* at a Michelin-starred restaurant and the UEFA Europa League is more akin to a *prix fixe* at your local bistro. Just as the quality of fare on offer at the former is vastly superior, so are the sums of money involved. The distinction between these two can be seen in last season's prize money on offer to participants in both competitions. This reveals a startling disparity: qualifying for the UEFA Champions League group stages (€ 3.9 million) [3] was more lucrative than winning the entire UEFA Europa League (€ 3 million) [4].

Thus access to the Champions League money is what will provide UEFA with its most potent weapon when it comes to regulating the financial governance of European football clubs. So how will UEFA use this weapon?

It is difficult to predict how UEFA will react in the seasons to come. Potentially, it could deny a club its license to participate in the UEFA Champions League. The consequences of this would be felt in myriad ways: loss of prize money for participating clubs but also indirect financial losses such as ticket revenue, a reduction in sponsorship income, a reduction in fan following and therefore shirt sales, not to mention the non-financial implications. Today a club that doesn't regularly compete in the UEFA Champions League finds it increasingly difficult to recruit top new talent. The refusal to grant a club a license could potentially relegate virtually any club into a pariah within a matter of seasons. The question is would UEFA go that far?

Mr Platini has said: *"If clubs do not respect what has been the will of European football, they will have to face the consequences. There is no going back."* However, if we analyse the tough rhetoric and look at the way UEFA has tried to use financial means to combat one of its other great foes, racism, it would seem UEFA are unlikely to bar any clubs. The pitiful fines imposed on clubs and FA's whose fans systematically racially abuse footballers would indicate that when push comes to shove UEFA will not actually take the plunge. One need only look back to the racial abuse by Croatian fans against Turkish players during the last European Championships in 2008. Having found Croatian fans guilty of *"displaying a racist banner and showing racist conduct"* UEFA proceeded to fine the Croatian FA just under £ 10,000 – less than the weekly wages of many of the footballers playing during that game. Time and again, UEFA has missed the opportunity to take firm action on racism. History would suggest it is therefore unlikely they will use the Regulations to actually prevent a club competing in the UEFA Champions League. Nevertheless, the mere threat could be enough to encourage clubs to get their financial houses in order.

How do we as sports lawyers intend to advise clubs and national associations on the Regulations?

As sports lawyers we will need to examine the regulations carefully to see what room for manoeuvre there may be in key sections such as articles 57-63. For instance, article 60(1) states that *"the difference between relevant income and relevant expenses is the break-even result, which must be calculated in accordance with Annex X for each reporting period"*. The interpretation of notions such as "relevant income" and "relevant expenses" will be crucial in deciding whether clubs and their creative lawyers will be able to soften the blow of the "break-even result".

Conclusions

Only time will tell how successful the Regulations are in curbing clubs' expenditure. If the simple threat of barring a club does not work, then UEFA will be forced to act under the Regulations. Failure to do so would render them pointless and further encourage certain clubs to continue their spending sprees. If nothing else, the Regulations must serve to address the balance of power between Europe's largest clubs and their governing body, UEFA. The authors look forward to the impending struggle between clubs and UEFA and will comment on these Regulations in the future once their impact becomes clearer...

Until then, it remains to be seen and, as the saying goes: "the devil is in the detail!" Our follow-up article will present more findings and provide further commentary and analysis.

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3 "Clubs get share of Champions League revenue". www.uefa.com. UEFA. Retrieved 13 December 2010

4 "Clubs to gain from Europa League payments". www.uefa.com. UEFA. Retrieved 13 December 2010.

France:

Sports services, accommodation and VAT – overview and recent developments

by Henri Bitar[1] & Thomas Vanhee[2]

Introduction

This article follows the article published by Dr. Rijkele Betten in the June 2011 issue of this Journal with respect to the same topics but analyzed from a Dutch point of view [3].

Having analyzed the French practice, we can conclude, not surprisingly, that there is a somewhat different approach in France. The issues for the VAT taxable persons, such as private sports accommodation providers, and non-VAT taxable persons, such as municipalities, remain, of course, the same. As often in VAT, the issue turns around the question of whether input VAT is recoverable.

Because the input VAT recovery is the only specific norm designed for VAT taxable persons to relieve them from the fiscal pressure of the input VAT, the natural tendency of the company, body or other structure involved is to seek input VAT relief.

The sports sector is characterized by a variety of providers. Government bodies (e.g. municipalities), semi-governmental agencies, non-profit associations ("NPAs"), as well as private companies could be involved. All the abovementioned examples are subject to different VAT regimes and thus require different solutions on different levels.

Sports services provided by public bodies

As in any good VAT analysis, the first question is whether the services or goods provider qualifies as a VAT taxable person. This can be evident for commercial companies, but it is less evident when a government body is offering certain services connected with sports.
As article 13 of the VAT Directive 2006/112/EC of 28 November 2006 ("the VAT Directive") stipulates:

> *"States, regional and local government authorities and other bodies governed by public law shall not be regarded as taxable persons."*

The term *"other bodies"* was inserted in order to include all forms of organizations concerned with public policy. In France, these are broadly, in order of the size of the territory, the French Republic, the Region, the Department and the Municipality (see article 72 of the French Constitution).

This means that, in principle, all revenues of such public bodies are outside the scope of VAT. If a municipality, for instance, issues a driving license and it requires payment for the issuance, then it is exercising these powers for the account of the French Republic and thus the consideration for the issuing of the driving license is not subject to VAT. As such, the municipality is the unique and exclusive organization which can issue the driving license and can, as such, exclude any other organization or body. It has a State monopoly on issuing driving licenses.

However, some public bodies do more than issuing driving licenses or identity cards. Often, and certainly in France, public bodies become players at the economic, cultural and social levels of society.

In order to avoid a discrimination between these public bodies which, because of their special status, cannot invoice VAT (also cannot recover input VAT), and commercial companies required to invoice VAT and thus, in theory, increasing the price of their services (although they can recover VAT), the EU legislators have added a provision in the VAT Directive.

Article 13 of the VAT Directive provides:

> *"when they (the public bodies, Ed.) engage in such activities or transactions, they shall be regarded as taxable persons in respect of those activities or transactions where their treatment as non-taxable persons would lead to significant distortions of competition."*

As a consequence, when any distortions of competition could occur, such as a commercial organization and a public body both running a big football stadium and requesting an entrance fee, these services should always be subject to VAT, even though the provider of the services has a different status.

When services are included in Annex I to the VAT Directive and are provided by public bodies, on the condition that they are carried out on a non-negligible scale, they are, in any event, regarded as being rendered by taxable persons and thus subject to VAT. Some examples are telecom-

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3 R. Betten, The Netherlands: "Realization of governmental sports accommodations and VAT – overview and recent developments", in: GSLTR Vol. 2, nr. 2, June 2011, p. 22.

munications services or supply of water, gas and electricity. Sports services are not included in Annex I to the VAT Directive.

French administrative doctrine [4] includes a presumption that the entry ticket to a swimming pool or ice skating rink run by a public body is an activity for which it does not enter into competition with other operators. The "green fees" to enter a golf course are not mentioned. If a public body runs a golf course, it will enter into competition with private golf courses. As a consequence, the green fee requested by a public golf course is, in principle, subject to VAT.

As for the running of a so-called "aqua park" by a public body, however, which is different from a traditional swimming pool, in order to determine the "distortion of competition" check to consider whether the entrance fees need to be subject to VAT, an analysis should be made of the competition which should go broader than only the inhabitants of the commune, since an aqua park will attract more people than only the inhabitants of the commune running it. [5]

Application of a VAT exemption – the VAT Directive and the ECJ

Once we have established that the economic operator or the public body competing with the private sector is a VAT taxable person, and we have concluded that this VAT taxable person is supplying services or goods for consideration, in principle, subject to VAT, the next step is to examine whether a VAT exemption is applicable.

A VAT exemption is often regarded by members of parliament as a way to reduce the VAT burden on the final consumer. What is often disregarded is that the service provider supplying an exempt service does not enjoy a right to recover input VAT. The provider of an exempt service will often increase the price asked for the service supplied to compensate for the non-recoverable VAT. This is called "hidden VAT".

The same does not hold for exemptions which grant a full right to recover input VAT, as for instance the exemption for intra-community supplies. These are also sometimes called "zero rates".

Article 132(1)m of the VAT Directive 2006/112/EC provides for an exemption (not granting the right to recover input VAT) in the sports sector for:

> *"the supply of certain services closely linked to sport or physical education by non-profit-making organizations to persons taking part in sport or physical education".*

ECJ case law has already established that:

> *"the implementation of a general exemption from VAT for the supply of premises and other facilities and for the related supply of accessories or other arrangements for the purposes of the practice of sport or physical education (...) constitutes a serious breach of Community law."* [6]

As regards annual subscription fees paid by the members of a sports association, the ECJ ruled that they can constitute consideration for the services provided by the association, even though members, who do not regularly use the association's facilities, must still pay their annual subscription fees.[7] In the case at hand, a golf club applied VAT only on separate "green fees" for non-members, whereas it exempted the annual subscription fee and admission fee for club members.

Note that the services provided by the association are constituted by the making available to its members, on a permanent basis, of sports facilities and the associated advantages and not by particular services at the members' request.

The ECJ had already prior to the Kennemer case ruled that a member state cannot limit the exemption of article 132(1) m of the VAT Directive to private establishments whose membership fees do not exceed a certain amount. [8]

With respect to the wording "persons taking part in sport", the ECJ ruled that this term should be interpreted broadly:

> *"it includes services supplied to corporate persons and to unincorporated associations, provided that (...) those services are closely linked and essential to sport, that they are supplied by non-profit-making organizations and that their true beneficiaries are persons taking part in sport."* [9]

In the case at hand, fees were invoiced by an umbrella sports organization to its members, which were exclusively sports clubs (and not natural persons themselves). The ECJ considers that, to consider the scope of the VAT exemption, you need to "look through", to examine the ultimate beneficiary of the sports services. In this case, it was ruled that the exemption is also applicable to the fees invoiced to the sports clubs, even though these are not natural persons and thus cannot actually literally take part in sports. This last judgment broadened the scope of the VAT exemption considerably.

It is noted that the VAT exemption for sports under the EU Directive has been criticized for its lack of clarity by some authors. [10]

The French implementation of the exemption: article 261, 7-1° of the French Tax Code

France has implemented article 132(1) m of the VAT Directive in its internal fiscal legislation in article 261, 7-1° a of the French Tax Code ("FTC"). According to French administrative doctrine, however, it is an ancillary exemption to the general VAT exemption for NPAs provided by article 261, 7-1° b of the FTC.

The criteria used for the general VAT exemption for NPAs are exactly the same as the criteria used for direct taxes to determine whether the association should be subject to so-called commercial taxes (for example corporate income taxes), as a regular commercial company is.

Even though a study of the fiscal system applicable to French NPAs does not fall within the scope of this article, it is relevant in the framework of this article, to shortly remind the reader of the conditions to be met, as sports clubs will often, at least partly, be organized as a NPA [11]:

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4 DB 3 A 121.

5 Rép. Besson: Sén. 20 January 2005 p. 171 nr. 14355.

6 ECJ 18 January 2001, C-150/99, Stockholm Lindöpark AB.

7 ECJ 21 March 2002, C-174/00, Kennemer Golf & Country Club.

8 ECJ 7 May 1998, C-124/96, Commission v. Spain.

9 ECJ 16 October 2008, C-253/07, Canterbury Hockey Club.

10 J. Swinkels, "Sports under EU VAT", in: International VAT Monitor, July/August 2010, p. 277.

11 Which broadly corresponds to the conditions mentioned in article 133 of the VAT Directive which member states can impose on VAT taxable persons to benefit from the exemption.

– management and administration on a voluntary basis by persons who do not have direct or indirect interest in the results of the activities of the NPA;
– the NPA does not distribute profits in any way;
– the assets of the NPA are not appointed to the members of the NPA and their heirs;
– the NPA does not enter into competition with the commercial sector;
– the NPA does not have any privileged relation with companies.

In other words, if the above cited conditions are met, the NPA will, in principle, not be subject to commercial taxes. However, in order to also benefit from the exemption from French VAT, the conditions of article 261, 7-1° of the FTC also need to be met. As such, in theory, an NPA could benefit from a special fiscal status not paying commercial taxes, but seeing its services subject to VAT. In practice though, an NPA not paying commercial taxes will most probably also have its revenues exempt from VAT.

It is mandatory that the NPA be an association under the Law of 1901 or any other organization legally constituted acting without the aim to make profit. This entails that natural persons and factual associations (associations which are not incorporated) cannot benefit from the exemption. Companies also cannot qualify.

The exemption only relates to services rendered, which are of a "sports" nature and which are solely rendered to the members of the body. We mentioned above that the ECJ ruled that "members" needs to be interpreted broadly, as not being limited only to natural persons. French administrative doctrine is not in conformity with this interpretation. [12]

Being a member supposes a permanent membership, not a payment of a membership fee for a limited period and inferior to one year. As a consequence, any services rendered to a third party (non-member) cannot benefit from the exemption.

As for the "sports" nature of the services, these need to concern teaching and the putting at disposal of the necessary installations, material and equipment to practice the sport.

Under certain circumstances and within certain limits, the organization can, as a complement to its activity, also sell goods to the members of its organization. These goods could concern, for example, sports goods (e.g. a kimono to practice judo).

The sales will be exempt from VAT if they are limited to 10% of the received revenue of the organization. Moreover, the organization cannot make use of traditional commercial sales' methods for the sale of its goods, as, for example, publicity destined for non-members.

The sales of drinks in bars or refreshment rooms are excluded from the VAT exemption. As a consequence, drinks served in the bar of a football stadium cannot benefit from the exemption. The same holds for restaurant and hotel services rendered by the organization.

It should be noted that the administrative tribunal of Paris has ruled that the French implementation of the article 132(1)m of the VAT Directive is in conformity with EC law. [13]

VAT rate applicable

If the conclusion reached, after the previous steps, is that we are dealing with a VAT taxable person, whose services or goods supplied are subject to VAT and not exempt from it, the next step will be to determine which VAT rate is applicable.

In France, the standard VAT rate is, in general, set at 19.6%. In certain circumstances, a reduced VAT rate can be applicable. For example, VAT on the construction of buildings could be subject to the reduced rate of 5.5%. This holds for social housing, but not for the construction of sports accommodations.

The reduced VAT rate thus decreases the VAT burden for actors which are not entitled to full VAT recovery. It benefits private natural persons or public bodies which do not enter into competition with commercial companies.

Although the possibility is offered under item 14 of Annex III to the VAT Directive, French VAT law does not foresee such a reduced VAT rate applicable to the use of sporting facilities, neither does it provide for a reduced rate on the entrance fee to sporting events. [14] The issue has often been raised in the French parliament. [15] On the contrary, such reduced VAT rate is in France applicable to cultural events (e.g. entry to the zoo, botanic gardens, museums, cinema and the like).

In other EU member states, certain VAT savings schemes are applied making use of this reduced rate. In these schemes, a separate body is constituted making the investment and recovering the input VAT because of the taxable granting of the use of sporting facilities at a reduced rate. This type of scheme cannot be implemented in France, or at least not as cost effective.

Other means to stimulate sports in France

At first glance, taking into account the absence of a reduced VAT rate applicable to the use of sports facilities and to the entrance to sporting events, the French VAT regime looks less attractive than the one applicable in other countries.

However, France invests in its sporting accommodation and equipment through other means. As such, equilibrium subsidies granted to private companies are not exceptional.

It is noted that, insofar as these subsidies are directly linked to the price of the supply, they shall be subject to VAT. Recently, the Administrative Court of Appeal of Marseille ruled that subsidies granted by a municipality to a company running a public golf course are subject to VAT.

The French State has also set up since 1975 a so-called "VAT compensation fund". Generally, the fund aims to compensate state bodies for non recoverable input VAT incurred on investment expenses, thus reducing the VAT burden on state bodies. As such, a municipality whose activity falls outside, because of the reasons explained above, will receive a refund of the non-recoverable VAT on certain expenses.

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12 Instruction 4 H-5-06, BOI nr. 208 of 18 December 2006.
13 TA Paris 29 October 1996 nr. 93-644, 1st sect., 4th ch., Association "IVI": RJF 4/97 nr. 317.
14 The reduced rate on the use of sporting facilities does not apply in Austria, Bulgaria, Denmark, Estonia, France, Germany, Hungary, Latvia, Lithuania, Malta, Romania, the Slovak Republic and the United Kingdom (EU VAT Compass 2010/2011, Part Three, section 6 (IBFD, Amsterdam 2010).
15 E.g. Rép. Cornillet AN 29 January 1996 p. 505 nr. 29699.

French small enterprises scheme

Certain organizations which do not qualify as public bodies or as NPA's can benefit from the small enterprises scheme in France. Organizations benefiting from the small enterprises scheme are not required to invoice any VAT. The system was implemented to decrease red tape for small enterprises. The downside is that no input VAT is deductible.

In order to benefit from the small enterprises scheme, the taxable turnover of a VAT taxable person established in France cannot exceed 80,000 EUR (VAT exclusive) per annum in total, and cannot exceed 32,000 EUR (VAT exclusive) per annum for the supply of services. Such VAT taxable person cannot exceed one of the two former thresholds. [16]

Lease of accommodation and creation of an additional commercial structure

Organizations having constructed golf courses or tennis courts can recover the input VAT by letting it to a third party and applying VAT on the lease terms. [17] The letting out of a sports center, including golf course, tennis courts, swimming pools, sports pitches, cloakrooms and showers, is also an activity subject to VAT, permitting the right to recover input VAT on the investment made by the lessor. [18]

In practice, important sports organizations often create a second commercial structure, next to the classic NPA. This commercial structure enjoys more freedom, but will also be subject to commercial taxes.

It will be in charge of the publicity of the organization (e.g. billboards), the fan shop for selling the sport shirts of the players, etc. This parallel structure, taking into account the nature of its structure, will most probably have a full right to recover input VAT.

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16 See article 293 B of the French Tax Code (some exceptions to the thresholds exist).

17 Rep. Albouy : AN 3 February 1992, p. 531, nr. 48461 for golf courts and D. adm. 3 A-1151 nr. 74, 20 October 1999 for tennis courts.

18 CE 13 February 1985 nr. 48243, 7th and 8th s.-s., Safogol A: RJF 4/85 n°547.

Germany:

Comparative survey on VAT, sports and sports accommodations

by Dr. Harald Grams [1] & Marion Geeraedts [2]

General VAT treatment of sports activities

Concerning the VAT treatment of sports activities the German tax law provides for different test criteria leading to differing results for the VAT taxation of supplies and other services. It is distinguished e.g. whether the providing and the receiving entrepreneur has his seat at home or abroad, whether the beneficiary is a businessman or a private person or whether the service is used for entrepreneurial purposes. As per 01-01-2011 legislation was again considerably amended and adapted to the EU provisions of the Council Directive of common system of VAT.

If a sports performance is rendered by a self-employed sportsman/sports club as businessman under VAT aspects, it must be distinguished whether the beneficiary is a businessman who makes use of the service within the scope of his company or whether a private person is involved. If the beneficiary is a businessman using the service for his company, the location of said service is to be determined in accordance with § 3a (2) UStG and is generally at the beneficiary's place of business (beneficiary principle). The place of the miscellaneous service is considered as basis for the VAT taxation. If the beneficiary is a private person, the place of this service in accordance with § 3a (1) UStG is situated at the business place of the businessman providing the service (businessman principle). The following examples show the general VAT treatment:

Example 1:
case beneficiary = businessman
An event organiser "D" from Düsseldorf (Germany) is businessman and arranges a tennis tournament at Köln (Germany). He engages the self-employed tennis player "M" from München (Germany).
Solution:
By his active attendance in the tennis tournament the self-employed tennis player "M" performs a miscellaneous service. The place of this miscellaneous service is situated in accordance with § 3a (2) UStG at beneficiary's "D" seat, i.e. Düsseldorf. Therefore a turnover subject to tax in Germany is on hand. The provision of § 3a (2) UStG follows the regulation of Article 44 of Council Directive of common system of VAT 2006/112/EEC.

Example 2:
case beneficiary = private person
A private person "F" from Frankfurt (Germany) engages a self-employed tennis player "B" from Berlin (Germany) to play a tennis match versus him at Hamburg against payment of a fee.
Solution:
By the performance of his activity as self-employed tennis player "B" renders a miscellaneous service. The place of this miscellaneous service is in accordance with §3a (3) no. 3 Bstb. A UStG (Art. 53 of MwStSystRL) at the place of performance, i.e. Hamburg. A turnover subject to tax in Germany is on hand.

Example 3:
place of service abroad
An event organiser "A" from Amsterdam (the Netherlands) is businessman and organises a tennis tournament at Köln (Germany). He engages the self-employed tennis player "M" from München (Germany).
Solution:
By his active attendance in the tennis tournament the self-employed tennis player "M" renders a miscellaneous service. In accordance with § 3a (2) UStG (Art. 44 of MwStSystRL) the place of this miscellaneous service is at the beneficiary's "A" seat, i.e. Amsterdam. In this case a turnover not subject to tax in Germany is on hand. Tax liability is diverted to the beneficiary's country, i.e. the Netherlands.

Example 4: place of service at home – foreign businessman as tax debtor
An event organiser "D" from Düsseldorf (Germany) is businessman and organises a tennis tournament at Köln (Germany). He engages the self-employed tennis player "B" from Barcelona (Spain).
Solution:
By his active attendance in the tennis tournament the self-employed tennis player "B" renders a miscellaneous service. In accordance with § 3a (2) UStG the place of the miscellaneous service is at the beneficiary's "D" seat, i.e. at Düsseldorf. A turnover subject to tax in the inland is on hand. In order to avoid a fiscal registration of the businessman "B" from Barcelona the tax liability is in accordance with § 13b (5) UStG (Art. 194, 196 of MwStSystRL) passed on to the beneficiary "D" (reverse charge).

In accordance with § 12 (1) UStG sports activities are basically subject to a tax rate of 19%.

Reduced rates applicable?

The application of a reduced tax rate according to § 12 (2) UStG is in general not intended for sportsmen/sports clubs. The sports activity is not considered as a performance comparable with theatre per-

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formances and concerts. Likewise any tax reduction for lectures and speeches held by a self-employed professional sportsman is not provided for. Lectures and speeches are indeed language works protected by copyright but any copyrighted exploitation rights are not granted to anybody else. [3]

VAT on entrance tickets

The estimation for the VAT treatment of entrance tickets differs from the general treatment. The place of the service (sale of entrance tickets) is determined according to § 3a (3) no. 5 UStG (Art. 43-59b of MwStSystRL) and is the place of the turnover or the location of the sports event respectively. The entrance tickets are also subject to the standard tax rate of 19% because the regulation according to § 12 (2) no. 7 UStG related to a reduced tax rate does not apply for sports events.

Example 1:
basic case entrance ticket
The football club "FC" with seat at Köln sells entrance tickets for a football match at Köln to individuals as well as to businessmen.
Solution:
In accordance with § 3a (3) no. 5 EStG (Art. 43-59b of MwStSystRL) the place of the miscellaneous service is Köln where the football match takes place. The entrance tickets are subject to the standard tax rate of 19%. Tax debtor of VAT is "FC" as ticket seller.

Example 2:
non-resident service provider
Event organiser "A" from Amsterdam sells entrance tickets for a boxing match at Köln. The entrance tickets are bought by individuals as wells as by businessmen.
Solution:
In accordance with § 3a (3) no. 5 UStG (Art. 43-59b of MwStSystRL) the service is taxable in the inland because the event is actually performed in Germany. The service provider "A" resident abroad is tax liable and has to be registered in Germany for VAT purposes. A reverse charge is excluded by § 13b (6) no. 4 UStG (Art. 194, 196 of MwStSystRL).

VAT on sports accommodations

The letting of living rooms and bed rooms which a businessman provides for the short-term accommodation of sportsmen or sports clubs, the letting of spaces for vehicles and the letting of business units (sports complex) is carried out in accordance with § 3a (3) no. 1 UStG (Art. 47 of MwStSystRL) on the place of estate of the rented object. If the estate is situated in the inland a taxable service is on hand. These services are not exempt from VAT according to § 4 no. 12 S. 2 UStG. The mere service of accommodating sportsmen and sports clubs is subject to the reduced tax rate of 7%. Additional services, as e.g. the letting of parking areas, the provision of wellness offers (swimming pool, sauna, massage), however, are subject to the standard tax rate of 19%. The same applies to catering during accommodation. [4]

Right on VAT refunds?

A resident businessman may assert input VAT paid in Germany in a VAT assessment (VAT advance returns or annual assessment). If foreign input VAT amounts incur, these may be reclaimed in an input VAT refund procedure according to § 18g UStG in a separate application procedure at the Bundeszentralamt für Steuern for every EU member state. This application must be made via an official online procedure (Elster-online) until September 30th of the calendar year following the calendar year of accrual of input VAT.

The applied refund of input VAT must amount to at least EUR 400.00 for an application period of 3 months. For an annual application or an application for the last quarter the minimum amount of compensation is EUR 50.00.

Non-resident businessmen who must be registered in Germany for VAT purposes may also reclaim input VAT amounts paid in Germany with VAT advance returns or a VAT assessment. This assessment has to be issued once per year as per December 31st of the relevant calendar year and to be submitted at the competent tax office. The competence of the tax office is based upon the country of residence.

A non-resident businessman who obtains services subject to input VAT in Germany and does not achieve any assessable and taxable turnover in Germany, may implement this input VAT paid in an input VAT refund procedure in his country of residence. This applies inversely to the procedure for the inland businessman who paid input VAT abroad.

It must be noted, however, that the input VAT refund procedure by the country of residence does not work yet in all EU member countries. Businessmen from Ireland e.g. must continue to submit their input VAT refund application in Germany.

Countries outside the EU with reciprocity (e.g. USA) refund VAT paid in Germany (§ 18 (9) UStG, Art. 171 of MwStSystRL) to foreign businessmen after application. Reciprocity exists for countries outside the EU which do not levy VAT or similar tax or is refunded to resident businessmen when levied. A sportsman or sports club from a country outside the EU with reciprocity may, therefore, apply for the refund of input VAT at the Bundeszentralamt für Steuern. This application is to be submitted as hard copy on an official form to the Bundeszentralamt für Steuern until June 30th of the calendar year following the relevant calendar year.

Practice in your countries

For municipalities

With regard to income tax it must be distinguished for municipal companies whether these are in public or in private legal form. As for VAT treatment both legal forms are subject to VAT. An application on refund of input VAT is thus possible.

For municipal companies the type of activity is decisive. If qualified as commercial business it is considered as businessman with regard to VAT. If the city of Münster e.g. organises a city run and sells T-shirts for participants, the relevant qualification is given and input VAT charged by other businessmen may be deducted from the VAT to be paid within the scope of the taxation procedure.

For sports clubs themselves

For the VAT evaluation of clubs an income tax classification will be required.

If a corporation (association, club) serving tax-privileged purposes operates business

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3 Husmann in Rau/Dürrwachter, UStG Kommentar 8. Auflage, § 12 Abs. 2 Nr. 7 Bstb. C Rdnr. 88.

4 BMF Schreiben vom 05-03-2010, EV D 2 – S 7210/07/10003; BStBl 2010 Teil 1 S. 259.

in the form of special-purpose business and/or commercial business, the club's turnover in this respect may be subject to VAT insofar as the character as small-scale entrepreneur does not qualify or is waived (for explanations concerning regulation for small-scale entrepreneurship see further under "Options for VAT liability available?"). Under income tax aspects clubs must be split into three sections. Ideal activities are considered as tax-neutral. This includes membership fees, donations and subsidies. As these revenues are not connected to any service exchange and the club has not an entrepreneurial capacity in this field of activity, these revenues are not assessable. The administration of assets and the commercial business must be allocated to the entrepreneurial domain of a club. The "administration of assets" comprises e.g. the letting and lease of sports accommodations and the transfer of rights to third parties. The item commercial business must be divided into the area of a special-purpose business and the tax-disadvantageous commercial business. The tax-disadvantageous commercial business comprises e.g. receipts from advertising in sport fields, the performance of sports events against remuneration and the maintenance of sports inns. The area of special-purpose business refers e.g. to receipts from cultural events. The entrepreneurial domains of a club are subject to VAT.

In accordance with § 12 (2) no. 8a, 8b UStG the reduced tax rate of 7% must be applied for the administration of assets and for special-purpose business. If the achievement of income is, however, directly competitive with the services of other businessmen which are subject to the standard tax rate, the general tax rate of 19% must be applied (§ 12 (2) no. 8a S. 3 UStG). Turnovers within the scope of the commercial business are subject to the general tax rate.

Input VAT amounts accrued within the scope of entrepreneurial capacity may be reclaimed in accordance with the applicable provisions for the assessment and input VAT refund procedure.

Use of intermediate entities or vehicles

If the intermediate person or company acts in its own name and for its own account, the application for input VAT refund according to described preconditions and formal requirements is possible given the entrepreneurial conditions are met.

If the expenses for the intermediate person or company are, however, only transitory items (business in the name and for the account of somebody else) which is passed on to the contracting entity, an application on input VAT refund is not possible.

Canteen VAT arrangements (for sports clubs)

The maintenance of canteens is not a sports event even though this offer is directed to members only.

Regarding income tax it must be distinguished for the handout of meals whether the recipients are employees (football players of a football club) or any third parties. This classification is important in order to determine the basis of assessment for the VAT apportionable to the meals.

Canteen always subject to VAT

For an estimation of VAT provisions regarding canteens an income tax evaluation is required, too.

The handout of meals is principally subject to tax regardless of who is the beneficiary.
For a consumption on the premises (in canteens as a rule) the general tax rate of 19% has to be applied.

For determining the VAT basis of assessment it has to be distinguished, however, whether the handout of meals to an employee is made as a payment in kind (wage in form of benefit in kind) or whether the beneficiary is an external third party.

For the handout of meals to external third parties the basis of assessment is calculated in accordance with § 10 (1) UStG with regard to the remuneration less VAT. If the canteen charges EUR 5,95 for a meal the basis of assessment for this turnover is EUR 5,00 (EUR 5,95 / 1,19).

For employees' payments in kind the basis of assessment has to be determined with regard to income tax provisions. One differentiates between company-owned canteens and canteens which are not operated by the entrepreneur (employer) himself. A company-owned canteen means that the entrepreneur either produces the meals himself or treats, finishes or completes the meals significantly prior to handing them out to the employees.

For a gratuitous handout of meals to employees by a company-owned canteen which produces only meals for employees the basis of assessment is calculated with regard to the value of the payment in kind (directive 8.1 (7) income tax directive). This value of the payment in kind amounts to EUR 3,80 per meal which is given to the employee.

If meals are handed out against payment in company-owned canteens the meal price paid by the employee, however, at least the value of the payment in kind of EUR 3,80 forms the basis of the taxation. This income tax basis of assessment has to be applied for VAT, too. Up to an amount of EUR 44,00 per calendar month this payment in kind is tax-free with regard to income tax. This tax free amount, however, does not apply for VAT.

An income tax reduction of 4% of the value of the payment in kind in accordance with § 8 (3) EStG can only be taken into consideration if the meals handed out are not exclusively offered to employees. This income tax reduction does not apply, however, for VAT.

Deviating from this provision are meals and drinks which are not consumed on the premises and which are subject to a reduced tax rate of 7%. This is the case e.g. if meals are not handed out in a canteen but at a stand on a sports centre. This has been confirmed by the prevailing jurisdiction of the BFH.

Options for VAT liability available?

Tax exemptions are usually not possible for the operation of canteens. In accordance with § 19 (1) UStG VAT is not levied on the turnover of resident businessmen if the turnover did not exceed EUR 17.500,00 in the preceding year and will not exceed EUR 50.000,00 in the current year (small-scale businessman regulation) unless the businessman waives the VAT exemption according to § 19 (2) UStG. The businessman will be bound to this waiver for 5 years.

5 BFH-Urteil vom 30-06-2011, V R 35/08

Practice in case of investments in canteens

A businessman not subjected to the small-scale regulation who operates a canteen and is subject to VAT is principally entitled to input tax deduction.

In accordance with § 15 (1) UStG the entitlement to input tax deduction is linked with a duly issued purchase invoice and the entrepreneurial use of the delivery or service received. Input tax must be asserted completely at the date of accrual contrary to the income tax treatment of capital goods which are amortised during several years.

VAT integration charges

Even without an intention to realise profits with regard to income tax an entrepreneurial activity based on the intention to realise income within the meaning of the VAT law can be given. [6] A sports club is an entrepreneur under VAT aspects even without the intention to realise profits under income tax aspects and can, therefore, deduct VAT charged as input tax.

Is legally and in practice VAT due in case sports clubs develop themselves new fields or stadia?

Sports clubs not operating a commercial business but acting primarily for the benefit of its members, do not advance the general public. This is considered as an ideal activity. Revenues serve tax-privileged purposes and, therefore, revenues and expenditures are insignificant for the taxation. Revenues of the ideal scope comprise particularly membership fees, donations and subsidies. Costs irrelevant for taxation encompass e.g. costs for membership administration, association fees, costs for training and youth work and expenditures for jubilees.

This scope is not subject to VAT. VAT must not be paid, input tax cannot be deducted and refunded.

[6] BFH-Urteil v. 12-02-2009, V R 61/06, BFH/NV 2009, 1212.

Spain:

Comparative survey on VAT, sports and sports accommodations

by Ángel Juarez [1]

1 General VAT treatment of sports activities

Spain's VAT treatment of sport activities is in general terms consistent with the provisions of Directive 2006/112/EC [2] – as amended by Directive 2008/8/EC [3] – and Regulation 282/2011 [4]. Some sport-related VAT events are exempt from VAT under certain circumstances, whereas certain others are subject to reduced VAT rates (as of the day of writing of this contribution being 4% and 8%). Where the exemption or the reduced VAT rates do not apply the standard VAT rate (as of the date of writing of this paper being 18%) will apply.

The Spanish VAT exemptions apply to the following supplies.

1 Sport education, training or retraining provided to children and young persons by bodies governed by public law having such objects as their aim or by other organisations officially recognised as having similar objects, or the parents' associations thereof; [5]

2 Services directly related to the practice of sport or physical education, provided that they shall be rendered to individuals practising sport by one of the following bodies:
   a public bodies,
   b official sport federations,
   c the Spanish Olympic Committee,
   d the Spanish Paralympic Committee, or
   e officially recognised non-for-profit sport entities or establishments [6] [7].

The exemption shall not apply to (attendance to) sport events. [8]

This rule has been interpreted on a wide number of occasions by the Spanish ruling authority, the General Directorate for Taxes, by means of letter rulings ("LR") and binding letter rulings ("BLR") [9].

According to LR 1902/2001 it is not necessary, for the exemption to apply, that the recipients of the services be members of the body providing the services. Also, it is irrelevant who bears the cost of the services, whether the individual practising sport or any other person. [10] Under such interpretation the exemption equally applies to services ancillary to those directly related to the practice of sport [11] as well as to the subcontracting of those services [12]. However, the exemption does not apply to the supply of goods. The LR established that, under those circumstances, the exemption would also apply to recurrent membership fees. [13]

In the field of sailing, BLR 192/2010 established that the exemption applied to entry fees to participate in sailing boat regattas [14] [15], to the initial down-payment made to become a member of a sailing race club and to sailing tuition services provided by the sailing club. In BLR 191/2010 it had been established that the exemption may apply to the lease of a sailboat from a sail club by its members [16] and that, likewise, where the exemption could not apply due to the sail club not being a qualified service provider [17], the reduced rate could apply.
According to BLR 886/2011, the exemption does not apply to the rental of marina berths for sports boats, because there is no such direct connection between such service activity and

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1 Partner, Juarez Asociados, Barcelona, Spain
2 Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax.
3 Council Directive 2008/8/EC of 12 February 2008 amending Directive 2006/112/EC as regards the place of supply of services.
4 Council Implementing Regulation (EU) Nr. 282/2011 of 15 March 2011 laying down implementing measures for Directive 2006/112/EC on the common system of value added tax.
5 Article 20 Uno 9º a Law 37/1992 on Value Added Tax ("Spanish VAT Act"). The exemption seems to mirror that in article 132 1 i of Directive 2006/112/EC. Article 43 Spanish VAT Act.
6 Such official recognition is granted, subject to the meeting of certain requirements, upon application to the Spanish Tax Authority ("STA"). The exemption becomes applicable as of the date recognition is first granted, without retrospective effect (article 6 of Royal Decree 1624/1992 laying down the Spanish VAT Regulations).
7 Article 20 Uno 13º a of the Spanish VAT Act. The exemption seems to be covered by article 132 1 m of Directive 2006/112/EC.
8 In this respect Spain did not exercise the option granted under ítem 1 of Part B of Annex X to the Sixth VAT Directive.
9 Before 2003 the application for BLRs was limited to only certain areas of the law. This is why most of the rulings given before 2003 are in the form of LRs whereas after 2003 the proportion of BLRs has increased to a notable extent.
10 This is clear in BLR 1110/2006, where the service provider – a company in the sport-adventure sector – billed the services mainly to travel agents.
11 Article 132 1 m of Directive 2006/112/EC will probably require that those ancillary services be nevertheless "closely linked" to the practice of the sport or physical education activity, as otherwise the exemption would not comply with the terms of the Directive.
12 LR 1410/2003.
13 The same conclusion was reached in LR 1410/2003.
14 See also Binding Letter Ruling No 177/2010 in respect of entry fees to a motor race.
15 LR 772/2000 reached the same conclusion in respect of entry fees for participation in futsal, tennis and chess tournaments.
16 Similarly, Binding Letter Ruling No 177/2010 also exempted the hiring of karts and motorcars in connection with training for a motor race.
17 I.e., one of the four bodies listed in article 20 Uno 1 13º of the Spanish VAT Act

the practice of sports [18]. In the view of the Directorate the exemption could also not apply to the supply of fuel, oil, water or electricity to sports boats, the transport of such boats or its repair and maintenance services. [19] Under the same grounds BLR 177/2010 denied the applicability of the exemption to the rental of a motor race track.

In the field of golf, LR 0164/2000 and BLR 2429/2010 established that the exemption could apply to member admission fees, monthly membership fees, invitation card fees [20], green fees, the provision of golf teaching, the hiring of golf karts and golf bags, the hiring of golf clubs and golf balls and the hire of lockers at a locker room. Conversely, neither the exemption nor the reduced rate could apply to golf club custody services, the hiring of batteries for electric golf karts and golf bags or the hiring of towels and wardrobes [21]. In the field of tennis a similar conclusion had been reached by LR 717/2000, where the lending of tennis, paddle tennis and squash courts [22] was deemed to be VAT exempt and the illumination services to such courts was classified as an ancillary service and, therefore, also tax exempt.

In BLR 2184/2009 the General Directorate concluded that the exemption applied to the organisation of gymnastics, aerobics and dance courses [23] [24], the organisation of sports campuses [25], to refereeing and coaching courses and to the annual subscription fee charged to sportsmen for the use of sport installations, but that it did not apply to the sale of medical kits to a sport club, the hiring out of coaches to a sport club or the loan of sport equipment [26]. In these two last respects BLR 2184/2009 seems to contradict the conclusions in LR 227/2004 (where the loan of tennis racquets was considered to qualify for the VAT exemption) and LR 1838/2004 (where the hiring out of coaches, physical education teachers, kit men and other auxiliary personnel by a sports federation to another sports federation or a sports club was held to qualify for the reduced rate). The services of personal trainers were deemed to also qualify for the exemption by LR 831/2000. [27]

3 The importation of pharmaceutical products to be used by persons or animals taking part in international sports events insofar as the amount of any such products shall be reasonable in view of the time to be spent in Spain by such persons or animals; [28] and

4 The importation of symbolic trophies or medals awarded in a non-EEA country to persons residing in Spain with regard to the sport activities of such persons or in recognition of their merits relating to a concrete sport event, provided that such importation shall be carried out by the relevant sport person. [29]

Although as to indents 1 and 2 these exemptions seem to fall within the scope of articles 132 1 i and m of Directive 2006/112/EC, respectively, it is certainly more difficult to find in Directive 2006/112/EC any exemption matching or covering those in the foregoing indents 3 and 4.

Although the term "sport" is generally not defined in the Spanish VAT legislation (and it was also not defined in Directive 2006/112/EC), the entry into force of Regulation 282/2011 on 1 July 2011 has introduced VAT definitions for "services in respect of admission to (...) sporting (...) events" [30] as well as for "ancillary services relating to admission to (...) sporting (...) events" [31]. Services in respect of admission to sporting events shall include the supply of services of which the essential characteristics are the granting of the right of admission to an event in exchange for a ticket or payment, including payment in the form of a subscription, a season ticket or a periodic fee including, in particular, the right of admission to sporting events such as matches or competitions, but not the use of facilities such as gymnastics halls and suchlike, in exchange for the payment of a fee. Likewise, ancillary services relating to admission to sporting events shall include services which are directly related to admission to sporting events and which are supplied separately for a consideration to a person attending an event, including inter alia the use of cloakrooms or sanitary facilities, but shall not include mere intermediary services relating to the sale of tickets.

Both such definitions are relevant in connection with the determination of the place of supply of those types of services when supplied to a taxable person [32], which – after the enactment of Directive 2008/8/EC – shall be the place where the sporting event takes place [33]. Such rule has translated into article 70 Uno 3º of the Spanish VAT Act. This deviates from the general rule determining the place of supply in respect of services rendered to taxable persons when the services are not admission services or services ancillary to admission to a sport event, as there the general rule of article 44 Directive 2006/112/EC (place where the receiving taxable person has established his business) will apply. For non-taxable persons the place of supply of services relating to sports activities and/or ancillary to sports activities (including the services of the organisers) is the place where the (sport) activity takes place. [34]

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18 In the view of the General Directorate for Taxes the connection is only indirect. The ruling revoked previous guidance from the same Directorate where the hiring of marina berths had been deemed exempt from VAT under narrow circumstances.

19 The same criterion was adopted in BLRs 192/2010, 1937/2010, 1938/2010, 1938/2010 and 1944/2010.

20 See also LR 1410/2003 and LR 227/2004.

21 LR 717/2000 and BLR 26/2008 reached the same conclusion.

22 The same conclusion was reached in LR 772/2000.

23 Whether dance is or is not a sport activity is not relevant in respect of the granting of the exemption, because the exemption refers to education and training in general.

24 LR 772/2000 did also say the same in respect of chess and swimming courses and LR 1410/2003 in respect of tennis, padel tennis, horseback riding and soccer courses. BLR 1110/2006 applied the same criterion in respect of services relating to climbing, trekking, rafting and bungee jumping.

25 In connection with sports campuses the exemption did not extend to food and accommodation services delivered to the participants to the campus.

26 It is surprising however how this interpretation is consistent with that in BLR 2429/2010, where the rental of karts, bags, clubs and balls in the context of golf was considered to be exempt under article 20 Uno 1 13º of the Spanish VAT Act.

27 Although, in that case, the reduced rate was found to be the applicable solution by the STA.

28 Article 43 of the Spanish VAT Act.

29 Article 47 2 of the Spanish VAT Act.

30 Article 32 of Regulation 282/2011.

31 Article 33 of Regulation 282/2011.

32 For the purposes of the place of the taxable transaction in respect of the supplies of services, the term "taxable person" includes non-taxable legal persons who are identified for VAT purposes, pursuant to article 43 2 of Directive 2006/112/EC

33 Article 53 of Directive 2006/112/EC.

34 Article 54 of Directive 2006/112/EC, which has translated into article 70 Uno 7º c of the Spanish VAT Act.

As to liability to pay VAT, Spain applies the optional reverse charge mechanism to supplies made by non-resident suppliers on the sole basis that the supplier is not established in the customer's member state (i.e. Spain) where the supply is subject to VAT. [35]

a Reduced rates applicable?

Reduced VAT rates apply in Spain at rates of 4% and 8%, although in respect of sport-related VAT transactions only the 8% rate is the one that may be usually applicable.

Reduced VAT rates are available in Spain for three different types of VAT transactions:

1 Services rendered to persons practising sport or physical education, provided that such services shall be directly related to the said practice, and provided further that such services shall not be exempt under article 20 Uno 13º a of the Spanish VAT Act – see indent 2 of section 1 hereof. [36]

   As to the cases where the reduced rate is applied it is worth referring to the LRs and BLRs quoted in indent 2 of section 1 hereof. Those cases where the exemption cannot be granted due to subjective nature of the service provider will automatically fall within the category of VAT transactions subject to reduced rates.

   In addition to the foregoing, the General Directorate for Taxes has some times held that the reduced rate did not apply when there was no direct link between the provision of the service and the practice of sport. In BLR 192/2010 it held that the reduced rate did not apply to the issuance or renewal fees in connection with a skipper license (indirect link) or to the fees paid in consideration for harbour and mooring services. According to BLR 886/2011, the reduced rate does not apply to the hiring of marina berths for sports boats. In LR 772/2000 it was held that the reduced rate could not apply to internet and telecommunication services, advertising and congress venue rental services supplied by a sports association. In terms of advertising services, LR 1094/2000 held that such conclusion (i.e. the application of the standard rate) applied both to advertising printed in the club's newspaper as well as to advertising panels in the club's sport venues. The same conclusion, on the basis of an indirect link between the service and the practice of sport not being sufficient to justify the application of the reduced rate, was reached in respect of medical services consisting on the evaluation, monitoring and control of injuries, the design of injury-recovery exercises or training plans, and advice in connection with injury recovery. [37] The same line of reasoning applied to deny the preferential treatment to the provision of services of diet or aesthetic specialists and the provision of UV-ray sessions. [38]

   In terms of subcontracting, LR 1410/2003 established that the subcontracting of these services by the front-end service provider would also be subject to the reduced rate. If that conclusion holds true, then there is no reason for the subcontracting of services also being exempt insofar as such subcontractor would be one of the providers qualifying for the exemption under article 20 Uno 1 13º of the Spanish VAT Act. However, in BLR 1838/2004 it was held that the licensing of tournament organisation rights by an officially recognised national sports association (such as the Spanish Football Association, or RFEF in its Spanish acronym) to any other person, whether a recognised lower-level association (e.g. a regional football federation) or a private entity (such as a sports club or a professional sports league), did not qualify for the reduced rate. [39]

   The lease by a sports club from a private owner of real estate where it would establish a sport venue was held not to qualify for the reduced rate by BLR 2086/2010.

2 (The attendance to) amateur sport events [40]. According to BLR 2054/2009 this rule and the reduced rate apply to the attendance as a spectator to a school sport event.

3 The practice of sport, provided that they shall be rendered to individuals practising sport by one of the following bodies:

   a public bodies,
   b official sport federations,
   c the Spanish Olympic Committee,
   d the Spanish Paralympic Committee, or
   e officially recognised non-for-profit sport entities or establishments. [41] [42]

   The exemption shall not apply to (attendance to) sport events. [43]

b VAT on entrance tickets

Entrance tickets for professional sport events are subject to the standard VAT rate, whereas if they are for amateur sport the 8% reduced VAT rate will apply. This applies irrespective to whether the event is organised by a body governed by public law or a non-for-profit entity or whether it is organised by a profit-seeking person or entity. According to an opinion document issued by the Spanish Revenue Service on 13 March 1996, the dividing line between amateur and professional sport is that set forth in article 46 of Law 10/1990 on Sport whereby, for a sport event to be considered of professional nature, recourse has to be taken to the contractual relationship between the individuals participating in it and the clubs/organisers, as well as to the economic relevance of the event.

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35 Article 84 Uno 2º a of the Spanish VAT Act.
36 Article 91 Uno 2 8º of the Spanish VAT Act.
37 LR 1168/2000.
38 LR 831/2000.
39 The LR first says that such licensing services do not qualify for the exemption and, further on, that they do also not qualify for the reduced rate. Although inconsistent with LR 1410/2003, this seems to be consistent with the view from the STA that the difference between services in indent 2 of section 1 hereof (exemption) and those in indent 1 of section 1a hereof (reduced rate) do basically consist on the qualifying character of the service provider.
40 Article 91 Uno 2 12º of the Spanish VAT Act.
41 Such official recognition is granted, subject to the meeting of certain requirements, upon application to the Spanish Tax Authority ("STA"). The exemption becomes applicable as of the date recognition is first granted, without retrospective effect (article 6 of Royal Decree 1624/1992 laying down the Spanish VAT Regulations).
42 Article 20 Uno 13º a of Law 37/1992. The exemption seems to be covered by article 132 1 m of Directive 2006/112/EC.
43 In this respect Spain did not exercise the option granted under ítem 1 of Part B of Annex X to the Sixth VAT Directive.

2 VAT on sports accommodations

There are no special arrangements in respect of VAT on sport accommodations. Sport accommodations are generally subject to VAT at reduced rates as is any other type of accommodation. [44] Clubs and municipalities will enjoy the right to deduct (whether in full or proportionally) input VAT credits arising from the accommodation of members of their sport teams insofar as such VAT charges shall have been incurred. Although restrictions apply to the right to deduct VAT on travel and accommodation, they are not specific to the sport industry.

3 Canteen VAT arrangements (for sports clubs)

As in the case of sport accommodation, there is also no special arrangement available for the supply of food and drinks or restaurant services in the context of sport. Canteen services are always subject to VAT although in most, if not all, cases it will be at the reduced 8% rate. This was the position held, amongst others, by LRs 1536/2000, 364/2003 and 1512/2003. In the case of sports bodies providing primarily VAT exempt sport services, the simultaneous provision of canteen services (whether directly or through a license) will make them entitled to (full or proportional) deductions of input VAT. As to the deduction of input VAT borne on the supply of food and drink or restaurant services by the recipient of those services, this may indeed be possible although – as in the case of accommodation – subject to a number of restrictions that are not specific to the sport industry.

4 VAT integration charges

a Is legally and in practice VAT due in case sports clubs develop themselves new fields or stadia?

It may be, according to article 9 1 d of the Spanish VAT Act [45], provided that

a the sport club shall not be entitled to full deduction of input VAT at the time of the taxable transaction, or
b the sport club shall have engaged in the provision of exempt VAT supplies throughout the period of adjustment of VAT deductions in respect of the field or stadia.

The issue was incidentally dealt with at least in LR 1512/2003 and BLR 2521/2009. LR 1512/2003 referred to a sport complex developed by a town council that would be run by the very same local administration and BLR 2521/2009 related to the rebuilding of a bullring by a provincial administration which would then lease the bullring out to a managing company by way of concession in the context of a public bid.

In practice the issue will most likely not affect the tax position of purely professional sports clubs. A purely professional sport club will mainly engage in the provision of match-day services [46], the provision of licensing/endorsement services (i.e. the licensing of trademarks, tradenames, etc.) and the provision of TV rights (in the form of access rights to TV companies). All those services are subject to and not exempt from VAT under Spanish law, which will result in the non-treatment of the application of the self-developed stadia as a taxable transaction. Likewise, mixed and amateur clubs not organised as a non-for-profit organisation will also not be affected by the rule, because they will most likely only engage in non-exempt transactions (although for most of their transactions the reduced rates will apply) and, therefore, their self-construction of stadia will not be treated as a taxable event for VAT purposes.

Conversely, the issue will affect the VAT position of entities subject to public law and recognised non-for-profit organisations engaging in the provision of sport services (e.g, public golf courses, municipal yacht clubs that abound in tourist areas, ...), as some of them will exempt from tax. This was the case of BLR 2521/2009, where the exploitation of the bullring through direct concession by the provincial administration or through an indirect concession [47] resulted in two different entitlements to VAT deductions by the relevant taxpayer (whether the provincial administration or the wholly owned company), which was seen by the General Directorate as potentially abusive.

b If so, is the value of the underground (if already owned by the club) included in the base on which VAT is to be calculated?

Yes. When the self-development of a field or stadium constitutes a VAT event, given that the taxable event will be the application of the asset to a business purpose, the value of the underground will be included in the taxable base (article 79 Tres of the Spanish VAT Act, which mirrors article 74 of Directive 2006/112/EC. This will be the case even where the acquisition of the underground was not itself subject to VAT, which is sometimes common in the case of local administrations receiving compulsory transfers of land in the context of building developments governed by Planning Law. The taxable event in this case will not be the acquisition of the land, but the application of the land in a context where the local administration does not enjoy a full entitlement to VAT deductions.

5 Other common VAT issues regarding sports in your country, if any

In the past there was quite a relevant controversy in the context of the VAT taxation of licenses to use image rights granted by individual sport persons to their employers in the context of employed sport activities. In most of such cases the granting of such licenses (and the remuneration accruing therefrom) was reclassified by the STA as disguised salary payments on which no VAT was due and from which no input VAT deduction could arise. The consequence of that was the reassessment of the VAT position of the employing clubs as to their VAT deductions, usually with interest and fines.

After 1996, with the enactment of the attribution rule in article 92 of the Individuals' Income Tax Act [48], the issue has very seldom appeared, because the position of the STA is now usually that the image right payments are attributed to the sport persons not as disguised salary payments, but as image rights payments, which will not put into question the validity of the VAT deductions.

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44 In this respect cfr. LR 364/2003 and BLR 2184/2009.
45 Such provision mirrors the wording of article 18 of Directive 2006/112/EC.
46 Attendance tickets (whether in the form of match-day tickets or season tickets), restaurant services. Etc.
47 Consisting first in the contribution of the bullring to a private company wholly-owned by the provincial administration and then in the concession of the exploitation by that company to a third person by way of public bid.
48 Resulting in the attribution to the individual of image right payments made by the employing club when they exceed 15% of the total remuneration paid by the club.

Switzerland:

New VAT Law entered into force on 1 January 2010 – Main impacts on the taxation of sport

by Alexandra Pillonel [1]

Introduction

Since its introduction in 1995, the Swiss VAT regime was criticized for its complexity as well as for the strict interpretation of the law implemented by the Swiss VAT authorities. Under pressure of the economic circles, the Swiss Parliament decided to urgently introduce a deep VAT reform. In this respect, on 12 June 2009, in a final vote, the Swiss Parliament approved the Part A of the revision of the VAT Law that entered into force on 1 January 2010 [2]. During the short deadline between the adoption of the law by the Parliament and the effective date of the Swiss VAT Law, the Swiss Federal Council approved the VAT Ordinance related to the Swiss VAT Law on 27 November 2009 [3]. Unfortunately, due to the extent of the VAT reform and to the significant changes introduced, the Swiss VAT authorities were not able to publish all new VAT-Information. To date, many publications are still expected and this situation creates a lot if insecurity for the taxpayers.

The main aim of the new VAT Law was to introduce noticeable simplifications of the system, to provide the highest possible degree of legal certainty, enhance transparency and to be more accessible to taxpayers. Among the almost 50 new regulations that have been introduced, certain ones trigger major impacts in the sports field. In this respect, the Swiss VAT authorities have published the VAT-Information nr. 24 related to Sports in March 2010.

Due the numerous modifications introduced as per the VAT reform, the purpose of the present article is not to exhaustively present all changes, but to bring to light some of the main VAT amendments that have impacts within the framework of sports activities, especially simplifications and new optimization schemes.

Preservation of the VAT exemptions [4] in the field of sports

In principle, turnover within framework of professional sport is taxable, except if they fall under one of the VAT exemptions listed under the Article 21 Para. 2 of the Swiss VAT Law. In this respect, especially qualify as taxable the following supplies:

– merchandising;
– supplies of sportsmen;
– players' transfer indemnities;
– advertising supplies;
– assignment of broadcasting rights;
– catering; as well as
– assignment of organization rights. Until 31 December 2004, this kind of supplies was VAT exempted (without right to input tax deduction). On 1 January 2005, the assignment of the sports events organizations rights by sports associations was finally included in the list of taxable supplies by the Swiss VAT authorities. In other words, if a Swiss sports association assigns its right to organize a competition to the national federation of a foreign country, this supply is zero-rated and not VAT exempted. Generally, this modification had a positive impact for Swiss sports clubs in as far as such supplies are zero-rated if the recipient is domiciled abroad and, as a consequence thereof, the Swiss sports club concluding agreements with foreign contracting parties increased their pro rata of input tax recovery. [5]

Like in the European Union, the Swiss legislator has introduced VAT exemptions of certain supplies for cultural and social reasons, but also in order to promote sports activities. [6] According to the jurisprudence of the Swiss Federal Court, VAT exemptions consist in deviations from the general VAT system and must be interpreted in a narrow way. [7] Within framework of sports, the following supplies fall under the VAT exemptions rules:

– consideration for sporting events, registration fees for participation in such events together with the ancillary supplies included (such as food and beverage during competition, massages or medals) [8]. Licences that sportsmen must

1 Oberson Avocats in Geneva, Lausanne, Sion and Neuchâtel.
2 RS 641.20.
3 RS 641.201.
4 In the present article, the term "VAT exempted supplies" refers to supplies that are VAT exempted from the tax without credit as per Art. 21 of the Swiss VAT Law and which do not entitle to input tax deduction.
5 See Xavier Oberson, "Sport et TVA: une compétition à trois arbitres: l'administration, le législateur et les tribunaux", in: Temi scelti di diritto dello sport (CFPG, Lugano 2008), pages 38-39, as well as Pascal Mollard, Xavier Oberson and Anne Tissot Benedetto, Traité TVA (Bâle 2009), chap. 2, nr. 463.
6 Art. 21 of the Swiss VAT Law.
7 Decision of the Swiss Federal Court dated 10 June 1998 (124 II 372).
8 This rule was introduced in 2001 with the old Swiss VAT Law. Indeed, under the VAT Ordinance regime applicable from 1995 to 2000, only passive participation as spectators to sporting events were VAT exempted and consideration for an active participation was taxable.

have on hand in order to practice a sport follow the same VAT treatment and are hence VAT exempted [9];
- sports education [10];
- supplies that non-profit institutions with a sporting object provide to their members against a contribution laid down in statutes or regulations [11]; as well as
- exclusive rental of immovable property, especially of sports fittings (real estate such as a stadium or swimming pool) [12].

However, even if the introduction of the new Swiss VAT Law aimed to implement simplifications, the distinction between taxable and VAT exempted supplies remains in the VAT authorities' hands and, in case of need, finally can be settled by the Swiss Federal Court. This distinction between taxable and VAT exempted supplies hence remains not obvious.

For example, as regards rental of sports fittings, the VAT exemption is only applicable if the rental is of an exclusive nature. Indeed, the individual right to use a sports fitting with other people against consideration qualifies as a taxable supply. This lead to the consequence that the rental of one of more swimming lines by a sports club in a swimming pool is VAT exempted but an individual entrance ticket for this swimming pool is subject to Swiss VAT.

Another significant example of the difficulty to distinguish taxable and VAT exempt supplies relates to sports education. Indeed, sports education is only VAT exempted if the performed activity consists in helping, assisting and controlling the headways of somebody in order that he accomplishes his goal in a specific field.[13] As soon as the participant is looking for a physical training, an adventure or an experience, the VAT exemption related to education is denied. Actually, the taxpayer has to determine whether the dominant part of the activity consists in educating sportsmen (swimming lessons) or in accompanying people within framework of a sporting activity exercise (e.g. rafting). [14]

In other words, despite of the new Swiss VAT law, the distinction between taxable and VAT exempt activities within framework of sports field remains a factor of risk for taxpayers.

A specific attention will have to be turned to the future developments as regards VAT exemptions. Indeed, according to the second part B of the VAT reform that is not yet entered into force, most of the VAT exemptions, especially most of the exemptions mentioned above and applicable to sports should disappear. [15] However, due to political pressures, this second part of the reform should never enter into force.

Significant modifications as regards the VAT qualification in the field of sponsoring [16]

Introduction

According to sponsoring agreements, the sportsmen or sports club authorise the sponsor to associate their image to the name of the sponsor against consideration. The sponsor may contribute in cash or in providing goods or services (value in kind). One typical example of the sponsoring is the mention of the sponsor's name and logo on the team's equipment.

Depending on the identity of the sponsor and of the beneficiary as well as on the extent of the advertising in favour of the sponsor, the sponsoring supplies may qualify as a donation, as a subsidy from the public bodies, as a VAT exempted publicity or as a taxable advertising with as many VAT consequences. In other words the sponsoring field is a mined ground that is lead by subtle distinctions.[17]

Sponsoring vs. donations – Extension of the definition of donations

The new Swiss VAT Law materialized the definition of the donation as:

> *"a voluntary contribution with the intention of enriching the recipient without expectation of a reward in the VAT sense; a contribution also qualifies as a donation if the contribution is mentioned once or on several occasions in a publication in neutral form, even if the name or the logo of the donor is used; contributions by passive members and by patrons to associations or to charitable organizations are equivalent to donations."* [18]

This definition of a donation covers the art. 33a of the old Swiss VAT Law introduced in January 2005 and the jurisprudence from the Swiss Federal Court.[19] However, until 31December 2009, this definition was only applicable to charitable organizations. In other words, with the introduction of the Article 3 lit. I of the Swiss VAT Law, the Swiss legislator has extended the application of the donation's definition, previously limited to charitable organizations, to all taxpayers.

Unfortunately, the delimitation between donations and sponsoring and especially the notion of "neutral form" has not been clarified in the new VAT Law. Hence, the criteria of distinction between a donation and an advertising supply remain not obvious and may lead to VAT risks for the taxpayers, all the more because the current publications from the VAT authorities do not disclose detailed rules on this distinction. [20] For example, until the end of the year 2009, the VAT authorities considered that the mention of the sponsor on beneficiary's website qualified as a donation except if there is a possibility to directly access to the contributor's website by a click on the name or on the logo of the sponsor. In this latter situation, the VAT authorities considered that an advertising supply was rendered by the beneficiary and that the character of donation was denied. In the VAT-Information nr. 05 on Subsidies and Donations, this example is not mentioned anymore, but this does not mean that the VAT authorities will not continue to apply it.

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9 Art. 21 Para. 2 cipher 15 of the Swiss VAT Law.
10 Art. 21 Para. 2 cipher 11 of the Swiss VAT Law.
11 Art. 21 Para. 2 cipher 13 of the Swiss VAT Law.
12 Art. 21 Para. 2 cipher 21 lit. d of the Swiss VAT Law.
13 VAT-Information nr. 24 regarding the Sector of Sports published by the Swiss VAT authorities, dated March 2010, page 70.
14 Xavier Oberson, "Sport et TVA: une compétition à trois arbitres: l'administration, le législateur et les tribunaux", in: Temi scelti di diritto dello sport (CFPG, Lugano 2008), page 35.
15 Statement of the Federal Council dated 25 June 2008, FF 6428.
16 See Xavier Oberson, "Sport et TVA: une compétition à trois arbitres: l'administration, le législateur et les tribunaux", in: Temi scelti di diritto dello sport (CFPG, Lugano 2008), pages 43-47 as well as Pierre-Marie Glauser, "Sponsoring et TVA", in: L'Expert-Comptable Suisse 11/2005, pages 886-896.
17 Due to the fact that the new VAT rules have not modified the approach of the calculation as regards supplies paid by the sponsor in kind, this question was not debated here.
18 Art. 3 lit. i of the Swiss VAT Law.
19 Decision of the Swiss Federal Court dated February 2002, in RDAF 2002 II, page 156.
20 *VAT-Info nr. 05* dated April 2010, page 15.

Taxable sponsoring vs. VAT exempted advertising

The Swiss VAT Law introduced a new VAT exemption that may have impact on sports entities that qualify as charitable organizations. Indeed, according Art. 21 Para. 2 cipher 27 of the Swiss VAT Law, are VAT exempted:

> *"publicity services that charitable organizations provide for the benefit of third parties or third parties for the benefit of charitable organizations"*.[21]

In other words, according to the text of the Article 21 Para. 2 cipher 27 of the Swiss VAT Law, independently from the form of the publicity, if a sponsor grants a contribution to a charitable organization, the supply of the beneficiary should in principle qualify as VAT exempted [22]. However, this issue has not been exhaustively handled in the publications from the VAT authorities and this question will probably be debated with taxpayers towards the Swiss Federal Court.

Anyway, the introduction of this rule offers a significant flexibility for charitable entities – such as UEFA, FIFA and IOC – that, depending on their own VAT situation, may decide whether they want to opt for the voluntary taxation of these supplies and then increase their right to input tax deduction. Furthermore, this new VAT rule will also be an important joker within framework of negotiations with sponsors in as far as the charitable organizations may opt à la carte and may hence decide not to opt if the sponsor has not a full right to input tax deduction.

Furthermore, this flexibility becomes also important for small local sports clubs that benefit from this charitable organization status and do not have interest to a VAT registration due to the administrative and financial charges it represents.

Modification of the localisation rules for services

Under the old VAT regime, the main localisation rule was the place of the supplier's activity, except if the service performed fell in the list of exceptions. [23]

According to the new VAT rules, the place of the recipient was instituted as the main localisation rule [24]. However, the legislator maintained certain exceptions. This especially concerns the following supplies:

– sports supplies, including organization of events that remain localised at the place where the activity takes place [25];
– services related to a real estate that remain located at the place where the immovable good is located [26];
– services generally rendered directly in the physical presence of individuals, such as sporting massage [27];
– hotel and restaurant services that are deemed as being rendered at the place where the service is performed [28]; and
– education services that remain localised at the place where the teacher is localised [29].

As regards reinvoicing of costs, the Swiss VAT Authority confirmed that in the case of the reinvoicing of each cost, the localisation rule applicable to the supply acquired and reinvoiced is maintained. [30] For example, if a sports organization committee reinvoices hotel costs incurred in the Netherlands, this supply will be localised abroad and hence, zero-rated.

Preservation of the specific VAT registration rules for non-profit making and voluntarily managed sports clubs

In Switzerland, is liable for VAT any person who, irrespective of legal form, object and view to gain, carries on a business and is not exempt from tax liability. A person carries on a business, when he:

1 independently performs a professional or commercial activity with the purpose of the sustainable earning of income from supplies; and
2 acts externally under his own name.[31]

In principle, anybody who fulfils the aforementioned conditions and whose taxable turnover on Swiss territory exceeds CHF 100,000.– per year must register for Swiss VAT.

At the point in time of the introduction of the VAT system in Switzerland in 1995, there was no specific rule as regards the VAT registration threshold for sports associations. Then, on 1 January 2001, under pressure of sports lobbies, the legislator introduced a specific threshold of CHF 150,000.– for non-profit making, voluntarily managed sports clubs (including sports events organization's committees).[32] [33] This increase of the VAT registration thresholds avoided additional charges for small sports clubs on a financial as well as on an administrative point of view. According to the practice from the Swiss VAT authorities, a sports association can benefit from this specific regime if the following conditions are fulfilled:

1 the entity qualifies as an association as per art. 60 of the Swiss Civil Code;
2 the management of the association is not lead by an employee of the association and is not remunerated for this activity (except expenses' reimbursement); and
3 there is no will to realize a benefit or this benefit is reinvested in the financing of other activities of the club.

As per reports that were at the origin of the VAT reform, the multiplicity of the VAT registration thresholds was criticized in as far as this complicated the VAT registration regime and was a source of mistakes for the taxpayers. Hence, in the first project of Swiss VAT Law, all specific thresholds, especially for non-profit making, voluntarily managed sports clubs, were abandoned even if it was obvious that this abolition would lead to additional financial charges for sports clubs[34]. However, again under the pressure of sports lobbies, the specific threshold of CHF 150,000.– for sports clubs was finally maintained in the VAT Law that entered into force on 1 January 2010.[35]

In this respect, it is important to underline that if a sports club does not realize a taxable turnover exceeding CHF 100,000.– per year but, for any reason, has an interest

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21 Charitable organisation: organisation which fulfils the requirements that apply for Direct Federal Tax pursuant to Article 56 lit. g of the Direct federal tax Law (Art. 3 lit. j of the Swiss VAT Law).
22 Pierre-Marie Glauser, "Impact de la nouvelle LTVA sur la jurisprudence", in : L'Expert-Comptable Suisse 5/2010, page 250.
23 Art. 14 of the old Swiss VAT Law.
24 Art. 8 Para. 1 of the Swiss VAT Law.
25 Art. 8 Para. 2 lit. c of the Swiss VAT Law.
26 Art. 8 Para. 2 lit. f of the Swiss VAT Law.
27 Art. 8 Para. 2 lit. a of the Swiss VAT Law.
28 Art. 8 Para. 2 lit. d of the Swiss VAT Law.
29 Art. 8 Para. 2 lit. c of the Swiss VAT Law.
30 VAT-Info nr. 06 published in August 2010 on the place of supply, page 54 and ss.
31 Art. 10 of the Swiss VAT Law.
32 VAT-Info nr. 24 on Sport, page 10.
33 Contrary to certain schemes applicable abroad, the Swiss VAT Law has not introduced any specific regime for canteens and the threshold of CHF 100,000.–, respectively CHF 150,000.– is applicable for the whole activity.
34 Message of the Swiss Federal Council on the Swiss VAT simplification dated June 25, 2008, pages 6338 and 6339.

to register for VAT purposes, a VAT registration on a voluntary basis is however possible (waiver of exemption from VAT liability).[36] In this respect, the minimal threshold of CHF 40,000.– of taxable or zero-rated supplies that was necessary to obtain a VAT number according to the old Swiss VAT regime is no longer applicable as of the year 2010.

The aforementioned rules are also applicable for foreign sports clubs or sportsmen. Hence, if due to the amounts received for the sporting competitions or exhibitions that take place on Swiss territory, the threshold of CHF 100,000.–, respectively CHF 150,000.– of taxable supplies on Swiss territory is exceeded, the foreign club or sportsman has to register towards the Swiss VAT Authorities and to appoint a tax representative. The only exception concerns foreign domiciled companies which will only carry out services localised at the place where the recipient is domiciled as per art. 8 para. 1 of the Swiss VAT Law. Hence, if the unique supply of a foreign domiciled tennis player consists in a sponsoring agreement with a Swiss watch brand, this tennis player will not have to register for Swiss VAT purposes even if the threshold of CHF 100,000.– is exceeded. In this case, the sponsor will have to declare VAT on its acquisition of services from the tennis player (reverse charge).

Main modifications as regards the right to input tax deduction

General principles

Under the old VAT regime, only recoverable VAT amounts were linked to charges dedicated to the realization of taxable or zero-rated activities. As of 1 January 2010, in principle, any taxable person is entitled to deduct Swiss VAT incurred in the course of his business activity. [37] However, like under the old Swiss VAT regime, the right to input tax recovery is denied for VAT on charges that are dedicated to VAT exempt activities. [38] Furthermore, subsidies may reduce the general pro rata of input tax recovery.

End of the reduction of general input tax deduction for donations

As of 1 January 2010, a significant change has been introduced as regards donations in as far as they do no longer restrain the general right of input tax deduction of the beneficiary. Indeed, before 2010, when a sports club received donations from contributors, these donations reduced the right to input tax deduction of the beneficiary.[39] In this respect, donations were generally [40] treated as a VAT exempted turnover and reduced the general right to input tax recovery and hence impacted the whole pro rata of input tax recovery. In 2010, the legislator has introduced the articles 18 lit. d and 33 para. 2 of the Swiss VAT Law that significantly modified the input tax deduction regime for beneficiaries of donations.

An exception to this system was however maintained for subsidies from public bodies. Indeed, even if like donations from private persons and entities, subsidies are allocated to beneficiaries without the expectation of a supply in counterpart, allocations from public bodies still reduce the right to input tax deduction of the beneficiaries. As mentioned by the Federal Council in its Statement, this VAT regime is contrary to the VAT system [41], but is maintained due to financial reasons. Like under the old VAT regime, in order to calculate a reduction of the input tax deduction, the taxpayer may decide to voluntary tax the subsidy. [42]

The breach to the system for subsidies is however offset with the introduction of a fitting as regards the calculation of the reduction of the right to input tax deduction. In this respect, the new VAT rules materialized the principle according to which, if the subsidy is dedicated to a specific object, the reduction of the input tax deduction only impacts the VAT related to charges in connection with this object.[43] Hence, if a sports club receives a subsidy dedicated to the construction of a stadium, the consequences on the input tax deduction will only impact the VAT related to the stadium's charges and not the general pro rata of input tax recovery.

New rules as regards input tax recovery in connection with certain VAT exempted supplies localised abroad

With respect to the right of input tax deduction of the VAT related to charges dedicated to VAT exempted activities, the new Swiss VAT Ordinance introduced an important optimization scheme as regards input VAT recovery for entities that are performing VAT exempted sports activities localised abroad (e.g. sports events that take place outside Swiss territory). Indeed, as of 1 January 2010, the input tax deduction for supplies rendered abroad is possible in the same proportion as if supplies had been rendered in Switzerland and the option for taxation of supplies had been exercised under article 22 of the VAT Law. [44] In other words, if a Swiss company organizes sports education or competitions that take place abroad, this entity will be entitled to recover the Swiss VAT related to these events. This rule especially allows Swiss taxpayers to increase their right to input tax deduction on their overheads.

Introduction of simplifications and flexibility in the option to voluntary tax certain VAT exempted supplies

As previously mentioned, if the VAT exempt sports supply is localised on Swiss territory, the provider will in principle not be entitled to input tax deduction. However, in order to optimize its input tax recovery capacity, the taxpayer may opt for the voluntary taxation of the VAT exempted supplies. [45]

If the taxable person opts for the voluntary taxation of registration fees for the participation in sport events, tickets to attend to a sport competition as well as sales of licences for sportsmen, the reduce rate will be applicable. Currently, this means that they will be taxed at 2.5% (2.4% until 31 December 2010). For other VAT exempt turnover such as association's subscription fees, rental of sports infrastructure or education fees, the standard rate is applicable when the supplier opts for their taxation. Hence, they are currently subject to 8% of VAT (7.6% until 31December 2010).

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35 Art. 10 Para. 2, lit. c of the Swiss VAT Law.
36 Art. 11 of the Swiss VAT Law.
37 Art. 28 of the Swiss VAT Law.
38 Art. 29 Para. 1 of the Swiss VAT Law.
39 Decision of the Swiss Federal Court dated 13 February 2008 (2C_506/2007).
40 Theoretically, there might be exceptions if donations were dedicated to specific investments.
41 Statement of the Federal Council dated 25 June 2008, FF 6368.
42 VAT-Info nr. 24 on Sport, page 59. See also Pierre-Marie Glauser, "Impact de la nouvelle LTVA sur la jurisprudence", in: L'Expert-Comptable Suisse 5/2010, page 248.
43 Art. 75 of the VAT Ordinance.
44 Art. 60 of the VAT Ordinance. Amongst the list of VAT exempt supplies of the art. 21 of the Swiss VAT Law, the right to opt for the voluntary taxation of VAT exempt turnover only concerns turnover in the field of insurance, finance and lotteries (art. 22 para. 2 lit. b of the Swiss VAT Law).
45 Art. 22 of the Swiss VAT Law.

The option is especially favourable in the case of organisation of VAT events. Indeed, the organiser will invoice tickets for the sports events at the reduced rate and recover VAT on charges that are generally taxed at the standard rate. [46]

Another improvement introduced with the new VAT Law in 2010, relates to the extension of the flexibility in opting for the voluntary taxation of VAT exempt activities in as far as the taxpayer has the possibility to opt for each transaction independently from the other supplies. In other words, each contractual relationship can be customized. For example, a sports club may decide to opt for the voluntary taxation of registration fees for competitions that happen on Mondays and not for competitions that take place on Tuesdays.

Furthermore, there is no more obligation to obtain an authorisation from the Swiss VAT authorities to voluntary tax VAT exempt turnover. These changes have considerably improved the life of entities. However, if the taxpayer decides to opt à la carte, he will have to justify his VAT recovery calculation.

General increase of the input tax deduction in relation to food and beverage

Until 31 December 2009, taxpayers were only entitled to deduct 50% of the input tax related to food and beverage costs, in as far as these costs were dedicated to the realization of taxable or zero-rated turnover. [47] The new VAT Law abolished this rule and allows taxpayers to deduct 100% of the VAT in as far as food and beverage are consumed within framework of a business activity that is not VAT exempted. In other words, if a sports team buys food and beverage within framework of a competition, the whole related VAT is now deductible in the proportion of the right to input tax deduction (that may however be reduced for example due to subsidies).

Representation of sportsmen

In the field of sports, sportsmen often appeal to agents in order to enter into contact with sponsors, to negotiate agreements, etc. From a Swiss VAT point of view, there should be two kinds of representations relationships:

– *Disclosed agent (acting in the name and for the account of his client)*
If the agent qualifies as a disclosed representative, his supplies would be deemed as being rendered where the recipient has its place of economic activity (or a permanent establishment). If the recipient is domiciled on Swiss territory, the supply rendered by the disclosed agent may however be zero-rated if the recipient is able to prove that the agent acts as a disclosed agent in transactions that are foreign localised. [48] In other words, if an agent plays as a disclosed intermediary in the signature of a sponsoring agreement with a contributor domiciled abroad, the supply of the agent will be zero-rated even if the sportsman is domiciled on Swiss territory.

The conditions related to the disclosed agency were strict and very formal until 31 December 2009. [49] [50] Indeed, disclosed agency was deemed to exist if the following conditions were fulfilled:

1 contracts have been concluded between the third party and the principal. Furthermore, the name of the principal must be disclosed on the invoice;
2 turnover is correctly booked in the accounting records. In other words, the agent only books his commissions in his P&L; and
3 the represented is identified by the third party, and the agent is always identified as acting in the name and for the account of the; and
4 the agent set up a commission account.

As of 1 January 2010, the conditions for the disclosed agency were modified and were amended as per the Obligations Code. [51] As a consequence thereof the direct representation relationships may now also result from circumstances, but in the end, the disclosed agent must always provide the VAT authorities with proofs of his activity in the name and for the account of the principal. Furthermore, the agent must again not assume the economical risk within framework of supplies rendered between the third party and the principal. [52]

– *Undisclosed agent (acting in his name but for the account of his client)*
When a representative acts in his own name but for the account of a third party, for the beneficiary of the supply, this one is not granted to the principal, but to the person that appears as a supplier, in other words, the representative. As it is a three-cornered relation, there are two supply reports successively similar: [53]

1 a supply from the principal to the agent; and
2 a supply from the agent to the final consumer.

This new definition of the direct representation may have consequences for Swiss domiciled sportsmen who have recourse to foreign domiciled agents. Indeed, if a Swiss sportsman enters into commercial relationships with a Swiss sponsor via a foreign agent who appears as acting in the name and for the account of the sportsman according to the new VAT regulations, this latter may now have to reverse charge the commission of the foreign agent and to invoice VAT on the supplies rendered to the Swiss sponsor. As a consequence thereof, sportsmen and agents must be very attentive on these new VAT rules which may challenge their old VAT status.

Conclusions

Obviously, the VAT reform has not answered all questions via the new law and some of the opened points will probably be settled by the Swiss Federal Court. However, it is undeniable that the new Swiss VAT Law introduced a lot of simplifications and improvements in all domains.

For some of the actors of the sports field, these amendments allow them to optimize their situation in as far as the right to input tax deduction should in certain cases be increased by the way of extension of the capacity to opt for VAT exempt supplies and widening of the right to input tax deduction (abolition of the negative impact of donation, extension of the right to in-

Continued on page 36 ▶

46 Xavier Oberson, "Sport et TVA: une compétition à trois arbitres: l'administration, le législateur et les tribunaux", in: Temi scelti di diritto dello sport (CFPG, Lugano 2008), pages 48-49.
47 Art. 38 para. 5 of the old Swiss VAT Law.
48 Art. 23 para. 2 cipher 9 VATL.
49 Art. 11 para. 1 old VATL; Cipher 192 of the Instructions 2008 about VAT published by the FTA.
50 Xavier Oberson, "Sport et TVA: une compétition à trois arbitres: l'administration, le législateur et les tribunaux", in: Temi scelti di diritto dello sport (CFPG, Lugano 2008), page 49.
51 Art. 32 of the Swiss Obligations Code.
52 Art. 20 para. 1 VATL; para 5.2, p. 32 of the VAT-Info nr. 4.
53 Art. 20 para. 3 of the Swiss VAT Law.

The Centre for International Sports Law (CISL)

by Kris Lines [1] & Jon Heshka [2]

Abstract

This article discusses the newly created Centre for International Sports Law (CISL) based at Staffordshire University, UK and Thompson Rivers University, Canada. The article investigates the creation and philosophy of the centre and examines why its cross-disciplinary international structure is so unique. The article concludes by exploring each of the centre's four main aims: research, teaching, dissemination and engagement.

What is CISL?

The Centre for International Sports Law (CISL) was established in 2010 as a centre of excellence in sports law research and teaching. The Centre is a partnership between two academics, Kris Lines (based at Staffordshire University, UK) and Jon Heshka (based at Thompson Rivers University, Canada). For a number of years, Kris and Jon had collaborated on sports law projects, conference presentations and research articles, so establishing a centre in 2010 represented very much a natural evolution of their work.

Although CISL is based geographically at the two universities, much of its work is done via the internet. The decision to upload as many research articles, teaching guidance and event material as copyright would allow onto the CISL website (www.staffs.ac.uk/cisl) was very much a conscious choice for two main reasons. The first is that it enables interested parties to freely download and engage with the debates. The second is that just as modern, professional sport is international, so any legal analysis, research and education has to be international too. Indeed, to suggest otherwise would undermine the very foundations of sports bodies such as the World Anti-Doping Agency (WADA) and the Court of Arbitration for Sport (CAS).

The nature and depth of this collaboration is however what makes CISL unique. One of the Centre's key strengths is its cross-disciplinary group of leading teaching and research faculty, students, practitioners, athletes, sports administrators and visiting scholars, spanning multiple international jurisdictions. As the centre grows, further universities, practitioners and sports organisations can be added to this international platform, bringing with it their own rich tapestry of viewpoints. What is particularly beautiful about this network is its simplicity. If everybody shares the same view on a subject, then the strength of the argument grows exponentially. Somewhat counter-intuitively, if there are multiple contrasting views, then the research is just as (if not more) valuable, as it reflects all angles of a debate, presenting a much more balanced and considered view. What is important is not necessarily the final conclusions expressed, but rather the process of analysis and engagement leading up to these.

Because both Kris and Jon were professional athletes in former lives, and now balance their academic careers with coaching sport [3], they realised that what is sometimes recommended at an abstract academic level is not always appropriate on the field of play and it is therefore vital that a practical understanding should underpin any conceptual analysis. It is this philosophy that shapes CISL's approach to sports law. Unlike more traditional university research institutes, CISL is not an ivory tower detached from sporting reality, but rather a blending of intellectually rigorous academic commentary with analysis from leading practitioners and sporting representatives who deal with these issues on a practical level. As Professor Michael Gunn (vice-chancellor at Staffordshire University) recently commented:

> *"Universities and students succeed best where they are well linked with and led in research and learning activity by the industry to which they relate. We want to ensure that all our graduates have a deep appreciation of employability, enterprise and entrepreneurialism and are studying programmes delivered by scholars and driven by industry applied research. CISL will epitomize this approach."*

The Centre does not shrink away from controversial issues, indeed its recent work in cheerleading, performance technology, gender discrimination and concussion liability has been at the very cutting-edge of current sporting debates. By providing an independent and balanced forum, CISL has helped to explore, educate and shape the international sports law agenda. It accomplishes this through four main principles.

Continued from page 35

put tax deduction linked to the concept of business activity, etc.).
As regards some other entities, this reform also positively impacts their VAT situation in avoiding a compulsory VAT registration (conservation of the specific registration threshold and VAT exemption of publicity services rendered by and to charitable organizations) that may trigger additional financial and administrative charges.

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3 Kris was formerly a gymnast and now coaches/tutors at his own trampoline club and for British Gymnastics; Jon was formerly a semi-professional volleyball player and climbing guide. He now coaches football and teaches outdoor education and mountain rescue.
4 http://www.sportsscientists.com/2008/11/swimsuit-controversy.html.
5 http://news.bbc.co.uk/sport1/hi/athletics/14444569.stm.

1 To conduct leading-edge national and international **research**. In particular, CISL has led calls at conferences and in print for the use of performance enhancement technology to be regulated and harmonised across sport. From detailed analysis of FINA's use of swimsuits and wave manipulation [4], to the decision to allow Oscar Pistorius to compete in Olympic races [5], CISL has provided the neutral conceptual framework for these issues to be debated and understood. Similarly, in 2009, critical CISL analysis on gender discrimination in women's ski-jumping was ultimately validated following the International Olympic Committee (IOC)'s decision to reverse their prohibition on allowing women skiers to jump at the Sochi Winter Games in 2014. [6] CISL's current research focuses on exploring whether cheerleading should be recognised officially as a sport (more on this below) , and on whether concussions constitute an inherent risk of contact sport, and if so, how governing bodies should regulate these head injuries. In recent months, this latter research has become even more significant following a number of tragic incidents in Canadian ice hockey in particular [8].

2 As well as conducting research, we feel that it is very important to integrate this research into **teaching** the next generation of sports lawyers and upgrading the skills of existing athletes, practitioners and administrators. This is important as sports law should not be seen as a dry, old subject, rather it is dynamic, often controversial and certainly cutting edge, it is also often to be found gracing both the front and back pages of newspaper reports. Any modern courses should reflect this dynamism, and CISL's are no exception. Indeed, our UG and PG programmes have won awards for their innovative assessment and embedding of social media tools. More details on the precise specifications of these programmes can be found on the CISL website or by email enquiry.

   We are particularly proud that our LLM in International Sports Law was specifically designed in conjunction with leading practitioners at Squire Sanders, in order to ensure that graduates of this programme come out with not just the academic knowledge, but also the practical skills to apply these cases to real life scenarios. As such, the course comes highly recommended for both new entrants to the area, yet is challenging enough to equip existing practitioners with the specialist sports law expertise they need to develop their practices. Entrance requirements for the award are a good honours degree in either law, or a sports-related subject. In order to reflect both the international and practical nature of the course, the LLM is available via distance learning, our only requirement is that applicants have a broadband connection to access our multimedia resources and electronic legal databases. The course can also be studied both full-time and part-time, thereby enabling busy professionals anywhere in the world to access this programme.

   While universities exist to educate adults and professionals, it is also important to work with younger students at earlier points on this pathway, indeed it seems slightly presumptuous to assume that people will gravitate to sports law or exhibit the amount of passion for the subject that we all do, if this is not nurtured at an earlier stage. Therefore unique to CISL are our "Crowdlaw" resources for educators, school and college students (www.staffs.ac.uk/crowdlaw). Designed in conjunction with leading national teachers and examiners, these resources introduce current sports law concepts in a friendly and practical manner. To ensure that the widest possible number of students benefit from these resources, we are also proud to provide new resources each month for students and educators to freely download as Open Educational Resources (OER) under the Creative Commons Scheme. Each topic contains:

   – a table detailing how the Crowdlaw resource fits with school and college courses;
   – a two-page factsheet outlining an introduction to the topic;
   – two pages of practical activities to try out;
   – a worksheet (with downloadable answers);
   – a game, quiz or activity sheet based on that topic.

3 The third aim of CISL is to create a **community of practice** in sports law and to **disseminate** this knowledge over a variety of platforms, publications and at conferences and events. Indeed, following the concussion liability theme, it is somewhat irrelevant how good governing bodies medical or playing rules are if they are not actually read, understood or enforced by the officials and coaches on the ground. It is therefore absolutely key for the latest research, good practice and knowledge to be disseminated as widely as possible to the greatest number of people. As well as publishing articles in trade and peer-reviewed journals, and speaking at conferences and events, CISL also publishes a free sports law blog ("The Sports Law Canary") containing analysis and commentary on the latest international cases, across the whole genre of sports law. The blog can be viewed from the CISL website or directly on sportslawnews.wordpress.com. We are also very proud to announce that content from the blog is now being syndicated by the Guardian newspaper sports network.

   While the focus of CISL has been very much international and web-based, from time-to-time, it is also important to provide opportunities to network with professionals, administrators and other academics. To this end, CISL also runs a series of lectures and small-group seminars on current and controversial areas of sports law. The inaugural seminar was recently given at the Britannia Stadium (home to Stoke City FC) by Professor Ian Blackshaw (visiting professor at Staffordshire University Law School) who led the audience in a lively debate challenging the "special" nature of sport in international law. The debate ranged from media rights to FIFA governance, from European Union Regulation to the legality of the Court of Arbitration, and all stops in between, and challenged many of the assumptions on how sport should be governed. We are indebted to Professor Blackshaw who has indeed set a high standard for future speakers.

4 Our final aim is to **engage with the public** and wider community on the sports issues that affect them most. As we expressed earlier, the Centre cannot exist in isolation from the wider societal context, therefore it is important that any research does not just take into

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6 http://news.bbc.co.uk/sport1/hi/winter_sports/12986716.stm.

7 http://news.sky.com/home/world-news/article/15669167.

8 http://www.pmrjournal.org/article/S1934-1482(11)00361-3/abstract.

account practical and academic views, but is also grounded by the views of the public. The most recent example of this engagement with the public is the big debate on whether cheerleading should be recognised as an official sport, hosted by CISL in conjunction with national and international cheerleading organisations. Within the platform of that debate, the public have the opportunity to read and engage with arguments on both sides, before expressing their own opinion through a short anonymous questionnaire. The results of this questionnaire will be analysed and published alongside our other findings in this area, later in September.

Concluding thoughts

We hope that this article has given you a glimpse into the Centre for International Sports Law and piqued your interest. Ultimately the persuasiveness of our research is very much a product of the quantity and quality of views that we can reflect. To that end, we would like to invite any readers to join us, whether as casual contributors, as experts in specialist fields, educators, or simply as protagonists engaging in a vigorous debate of the issues. (Please send any expressions of interest to either of the email addresses listed at the bottom of the first page of this article.)