

Kluwer International Tax Blog

About professional soccer players, sons of God and friends of the devil

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More and more soccer players hit the newspapers because they are not just creative in the soccer stadiums but also in dealing with their tax returns. Recently we have seen the press reporting on Lionel Messi and Cristiano Ronaldo. Let I make instantly clear to you that I have no knowledge at all about soccer and soccer players, mother nature did not want me to be able to play any ball, but I do have quite some experience with artists where issues are comparable. For both types of professionals goes that besides their direct income they acquire like their salary as a soccer player, there is also that clearly significant component of indirect income which they realize with marketing activities. A very nice deal with Adidas provides Messi according to public sources around 20 million a year during 7 years. I do believe there are famous sportsmen and artists who do not get close to this....

But now these sons of God are considered to be tax frauders. In both situations the Spanish district attorney has researched the direct and the indirect earnings of these soccer players and has reached the conclusion that both hero's of many have realized more income than they reported in Spain. Newspapers have picked this up around the globe so all of you will be aware of this.

Messi was convicted to jail for 21 months, but he was lucky enough to be allowed to pay a sum of money in order to stay out of this not so very comfortable hotel room which is not even good enough for my standards. In Dutch the tax administration always says in a rough translation: 'we can not make you more happy when you pay your taxes, but we can make it a little more easy for you'. Still you have to be able to use that easyness since many people cannot afford to pay in order to stay out of jail. Ronaldo is still in the middle of the inquiry but according to the state attorney he has to fear at least 15 months in that not so fancy resort where he has to reside without a belt or shoe strings....

But are the above cases dealing with tax evasion? Or is it still tax avoidance? And suppose, these cases can be considered to be tax evasion, what are the consequences? I do remember from not too long ago a situation of a Dutch DJ who explained in an interview enthusiastically about his career. He also answered some questions about how he runs his business. He explained the journalists that he has organised his business via a Honk Kong corporation which owns all his rights. On the question of one of the journalists whether he liked Hong Kong he mentioned that he has never ever been there. It is clear that this is a situation of tax avoidance since he is not hiding anything and legally it is currently still possible to transfer certain rights to an entity in another country. It seems

for example obvious that under current rules the management of royalty's regarding music can be done from Hong Kong. But still, first that music has to be created and secondly that music rights have to be transferred to that other country. And this will clearly result in a capital gain tax. In the future these structures will be a lot more complicated since under the new international tax rules the activities which are being undertaken by the offshore company should be cut into pieces which have to be valued individually. Valuation takes place according to many criteria but significant people functions is one of the most important. And just managing music rights is probably not the most value creating activity one can do, which has as a consequence that under new rules the resident country of this DJ will be allowed to still tax a major part of the music rights even when the management is fully in Hong Kong. But still, transferring the rights to an offshore country does not make it an act of evasion. It is clearly avoidance since it is defensible and the artist is quite transparent. Discussion can only arise to the question to what extent income can be allocated to the offshore country .

Both sons of God are being blamed of tax evasion. What is going on? Did they really divert their money illegally or did they receive the money in a bag which they have deposited to some sleazy bank to put it there on a number account? To the extent I understand both cases, this is not what is going on. The rights both soccer players exploit via an offshore structure are their so-called 'image rights'. And of course these image rights are linked to the person of the soccer player but the exploitation of these will probably being done by their agents or by thirds who are specifically for this purpose being hired by their agents. The soccer player is fully aware of all the interest in him and will also cooperate in making pictures and video's at a very cozy location and ultimately he will sign the sponsor agreement. But often that is all he is doing. To my knowledge all of these activities have been executed outside Spain. Would this be different then of course Spain would be entitled to tax part of the revenues. But when the factual exploitation of the image rights is being executed from the Bahamas, then under current rules the Bahamas is entitled to the residual.

After all, would any magazine of Kluwer publish a photo shopped picture of Messi with that Kluwer magazine in his hands as an instrument to market the magazine, I expect the agent and their lawyers supporting him to sue Kluwer in order to let them pay compensation for that abuse of their image right. And these lawyer do not necessarily have to be lawyers of the state where ther soccer player resides. So these actions are real activities. And that is essential. And although these rules are, as mentioned before, going to be changed soon, currently they are still applicable. From that perspective it surprises me that Messi has lost his case for all courts including the Spanish supreme court. This has probably a lot to do with the fact that he has done everything possible to hide all his activities and make sure that nobody could find out who owns all the corporations he used to exploit his image rights. If I am informed well (for all clearness: I have not had the possibility to research the files of these players), he had corporations in the United Kingdom, Switzerland, Uruguay and Belize. And his name can also be found in the Panama Papers, so there could be even more. And this is probably exactly why he is in trouble. Would he have been more transparent than the discussion would have probably developed in a different direction. In that situation the structure still would have been a tax avoidance discussion and the only thing he needed to discuss with the authorities is to what extent he can allocate income to his offshores.

As far as I have read Ronaldo seems to be fully transparent. His offshore entity has been incorporated in his years in Manchester when he played for Manchester United and therefore the discussion should be focused on the question whether the way he performs his business is in line with the international tax requirements as currently applicable. I expect that his case will be much stronger. That doesn't mean he is out of the scope of discussions with the Spanish tax

administration. Spain is one of these countries where a tax inspector can earn a bonus for every euro he additionally collects from a tax payer after a tax audit. In a country where this is practice, everything is possible. By the way, it is not just Spain within the European Union where these kind of perverse stimuli are known in order to get the maximum result of a tax audit. Unfortunately several other member states seem to have comparable systems. A strange development within a European Union where companies are often blamed for their tax planning but where apparently the attitude of some tax administrations stays without any discussion.

So what would have been the best option for Ronaldo? Dissolve the tax structure after he moved from the United Kingdom to Spain? Depending on to whom you will ask this question, you will receive different answers. A famous philosopher (Jesus Christ) once said ‘Give to ceasar what is ceasars and give God what belongs to Gods’ but he did not say ‘give ceasar what he asks you to give him’. And that is exactly what is the point here. Messi made a mess about his fiscal position by hiding everything while Ronaldo seems to be fully transparent about everything. That is quite a difference situation. For Ronaldo the only discussion the tax authorities should be entitled to, is regarding the interpretation and the acceptance of the international tax rules. And those rules are the current rules and not, as seem to be demanded by the Spanish tax authorities, the rules which have been agreed to a certain extent within OECD and EU and still have to be implemented.

For me Ronaldo is still a son of God. Because when just playing a ball like he does, can make you a millionair as he is, he must have something special. And Messi? A son of the devil? It will all depend on the question whether he will be transparent enough at the moment he will meet Saint Peter when he exits our globe.....

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