



•ALERT•

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Sports & Tax: Hot Topics

The sports sector has been affected by some significant legislative measures, including the extension of the tax relief addressed to the so-called "Inpatriate" to professional sportsmen, as well as some interesting rulings by the Italian Court of Cassation regarding the transfer of the tax residence of players abroad and the capital losses realized in connection with the transfers of free agents.



“INPATRIATED” PLAYERS

The relief recognized to the so-called "Inpatriates" by art. 16 of Legislative Decree no. 147/2015 was extended, starting from 30 April 2019, also to professional sportsmen. Joining the scheme involves the payment of a contribution equal to 0.5% of the tax base directed to the fostering of the youth sectors.

The Revenue Agency with circular of 28 December 2020 n. 33 provided clarifications regarding the regulatory changes listed above. In this document of practice, he specified that the "inpatriate" regime could not be recognized for professional sportsmen until the adoption of the D.p.c.m. implementation of the discipline.

The decree soon to be published in the Official Gazette should overcome the issue raised by the Revenue Agency. Indeed, the possibility recognized for "inpatriate" professional sportsmen to benefit from the benefit has been confirmed retroactively, starting from 2019, through the payment of the contribution (equal to 0.5%) by March 15, 2021 directly from the professional sportsman.

Also, the relief presents some further critical issues with regard, in particular, to football players. The tax relief subjects the recognition of the partial contribution to the formation of the taxable income of the salary granted to the worker, upon condition that the activity performed is conducted "mainly" within the national borders, that is, that the work is performed in the Italian territory for a period superior to 183 days in each tax period.

This condition does not fit with the concept of "season" to which the football activity is linked, being, at international level, the period that begins with the first official league match and ends with the last official match of the championship, coinciding at national level with the period from 1 July to 30 June of the following year. This circumstance, which may affect the enjoyments of the advantages, is further aggravated as a result of the measures adopted to contain the spread of COVID-19.

It is necessary that the legislator makes a "correction" to the definition of "prevalence", so that contractual cases not referable to the calendar year due to circumstances beyond the control of the parties are also governed.

TRANSFER OF THE FISCAL RESIDENCE OF PLAYERS ABROAD

With ruling no. 29095 of October 2020, the Court of Cassation declared inadmissible the appeal filed by the football player Mirko Vučinić in connection with the issue of tax residence. The Court, which denied the player the loss of his tax residence in Italy despite being registered for an Arab team, interestingly upheld the arguments of the Italian tax authority.

The judges analyzed and found substantial factors that linked the player to the Italian territory notwithstanding the transfer to Abu Dhabi (payment of contributions for domestic workers, children attending schools, current financial relationships, ownership of cars and motorcycles, ownership of real estate and utilities in Italy, real estate contracts, etc.)

As a result of this judgment, Vučinić, although registered with a foreign club, was considered a taxpayer fiscally resident in Italy with the consequence of being subjected to taxation for all income produced, both from Italian and foreign sources; for this reason, all the fees received by the player during his experience with the Saudi team were considered to have been evaded, as they were not declared in Italy.

In conclusion, if a professional sportsman decides to move abroad, he should also consider to transfer his center of vital, family, social and working interests there.

DEDUCTIBLE LOSSES FOR THE TRANSFER OF THE RIGHTS TO THE SPORTS PERFORMANCE OF FREE AGENTS

The Court of Cassation tackled again the question of the transfer of the free agents players (i.e. without payment of a transfer fee), with the intention of bringing its interpretation back to unity, after the decisions of the opposite orientation of the 2019.

The Court drew attention to the legal relationship underlying the buying and selling of players, framing the case in the context of the transfer of the contract pursuant to art. 1406 of the Italian Civil Code and on the title of the transfer - free or onerous - when, despite not having been paid a price in money, an interest structure deemed convenient for both parties is reached.

The free transfers of players generate deductible capital losses, since the transferring team renounces the services of a player who is no longer part of the sports project and the transferring team, deeming it appropriate to include that player in their own line-up agrees to take on the burden of its engagement, otherwise borne by the transferor.

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