



INTERNATIONAL ASSOCIATION OF YOUNG LAWYERS

Income tax for professional athletes and artists - a cross border story

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National Report of [Country]

MARCELO DINIZ BARBOSA

ANDERSEN BALLÃO ADVOCACIA

Av. Jaime Reis, 86

CEP 80510-010 Brazil

+55 41 32217777

diniz@andersenballao.com.br

General Reporters

Pablo Pedrajas Quiles, Abdón Pedrajas Abogados & Asesores Tributarios,
S.L.P, Madrid, Spain

Johan Myrén, Advokatfirman Lindahl, Göteborg, Sweden

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1. Introduction

This questionnaire concerns athletes /artists performing missions in countries other than their country of residence, for longer periods or for only short events.

Frequently, athletes / artists ' income is arranged in a certain manner for the purpose of tax efficiency. Such arrangements may involve performing the missions under the name of a company owned by the athlete / artist or by performing the mission as an employee. The first issue relevant for this questionnaire is what fiscal impacts such arrangements have.

The fees for athletes / artists' performances often consist of several components. Athletes regularly achieve signing bonuses before any performance is completed, followed by rewards when performance has been completed and incentive bonuses following successful execution. Moreover, athletes /artists regularly have endorsement income in connection to sports or arts events. The second issue addressed in this questionnaire is which of those components are covered by the regulation.

How is the covered income taxed? The third issue to address is how the found income of the athlete/artist is taxed and who is affected by the taxation.

Since the issue involves more than one country, the questionnaire further addresses the issue of double taxation. The final issue concerns how the issue of double taxation generally is handled.

Finally, athletes and artists may have income for their image rights. The last part of the questionnaire is related with the regulation for the image rights in your country.

2. General questions

- a) Is there any special tax legislation applying to athletic/artistic performances completed by athletes/artists residing outside the country of performance? Please describe these tax regime(s) briefly.

Although Brazil has a National Support Program for Culture (PRONAC), which grants government subsidies for Brazilian artists, there are no specific tax regimes for Brazilian or foreign athletes/artists. Their taxation will depend directly on whether they are Brazilian tax residents or not, just like any other person.

There are precedents of Brazilian athletes/artists that have performed their activities by means of legal persons, and have been questioned by the tax authorities. Some have had their legal persons disregarded and have been taxed based on the rules applicable to natural persons, under the allegation that their

activities are strictly personal, and therefore their legal entities have no substance.

Brazilian artists/athletes companies are typically accepted only if they perform activities which are not exclusively related to the core activity of the athlete/artist, or if they have several clients, and not only one.

If the payments, however, are made to foreign companies, the tax authorities do not have the authority to disregard such legal persons.

- b) If so, who is covered by the legislation? (natural/legal persons?)

Not applicable.

1. Commercial constellations

- c) What are the tax implications when payment for an individual athlete / artist 's performance is made to a company owned by him?

If the payment is made to a Brazilian company: as mentioned on the previous item, there are risks that the Federal Revenue disregards the company and taxes such values based on the rules applicable to natural persons (up to 27,5%). If not, the taxation will occur based on the rules applicable to legal entities (up to 34%), and the dividends which are later on distributed to the natural person will be exempt.

If the payment is made to a foreign company: depending on the nature of the payment and possible DTCs, Income Tax will be withheld in Brazil.

- d) Who is taxed on compensation for an athlete/artist's performance, when it is paid to a company in which the athlete is employed?

In Brazil, the company will be taxed, and the dividends which are later on distributed to the natural person will be exempt.

If the payment is made to a foreign company, income tax may be withheld depending on the nature of the payment and possible DTCs.

- e) Is the company's business as a whole of any relevance for the assessment of the questions above?

Indeed, as mentioned on the first question, they will have a direct impact on whether the tax authorities consider the Brazilian company legal or not.

In case of a foreign company, the activity will not be of great relevance.

- f) Is it relevant for the answers above whether the company conducts further activities or has more employees?

Indeed, as mentioned on the first question, they will have a direct impact on whether the tax authorities consider the Brazilian company legal or not.

In case of a foreign company, this will not be of a great relevance.

- g) Would the answer be different if the compensation could be attributed to the performance of an athletic team or an artistic group?

Yes. An athletic team or artistic group is a reunion of natural persons, and therefore the collective nature is much more evident, legitimating the company.

- h) Is it of any fiscal significance if the international commitment extends to a long period of time?

It may be – depending on the time spent in Brazil/abroad, and possible DTCs, the artist/athlete may become a Brazilian tax resident or not, triggering different tax consequences.

- i) **Income covered by the Taxable base**

- j) What kind of income is covered by the special tax legislation?

Not applicable as there is no special legislation for athletes/artists. Taxation will occur based on the standard Brazilian rules.

- k) Does the legislation limit the taxation to income from the sport /arts practice itself, or does it extend the taxable income to services performed in connection to sports or artistic events and assignments related to the athlete/artist's sports career?

Standard taxation determines the taxation of all income.

- l) Does the income taxable include compensation for performances, endorsements, the sale of merchandise, and royalty, or other income related to the event?

Standard taxation determines the taxation of all income.

- m) Are signing bonuses included in the income covered by the special regulations?

Not applicable as there is no special legislation for athletes/artists. Taxation will occur based on the standard Brazilian rules.

- n) What is the regulations take on incentive bonuses based on personal or team performance?

Not applicable as there is no special legislation for athletes/artists. Taxation will occur based on the standard Brazilian rules.

- o) Is endorsement income considered to be included in the compensation for the athletic /artistic performance and, if so, to what extent?

Standard taxation determines that endorsement is taxable income like any other.

- p) Does the legislation limit the amount that an athlete / artist may receive from his employer in connection with assignment of image rights?

No. The standard legislation does not establish any limit.

- q) What is the treatment your national legislation has for image rights in personal income tax?

Image rights are considered taxable income.

- r) From a tax point of view, are there any differences in the treatment of image rights between a resident athlete / artist and a non-resident athlete/artist in your country?

Yes. Residents will be taxed based on a progressive table of up to 27,5%, and non residents will be taxed at a flat rate of 15% or 25%, depending on the nature of the income.

1. Tax rates

- s) What is the applicable tax rate?

Residents will be taxed based on a progressive table of up to 27,5%, and non residents will be taxed at a flat rate of 15% or 25%, depending on the nature of the income.

- t) Does the tax rate differ depending on the sport practiced?

It does not.

- u) And in the case of artistic performances, does it differ?

It does not, either.

- v) Is the tax rate fixed or progressive?

The tax rate for residents is progressive, and fixed for non residents.

- w) Does the legislation allow for deduction of costs with regard to the athlete / artist tax?

For tax residents, yes. For non residents, no.

- x) Does the taxed income serve as a basis for social security contributions?

For tax residents, yes. For non residents, no.

- y) Who is responsible for the payment of the tax?

For tax residents, the artist/athlete himself. For non residents, the income tax is withheld by the payer.

1. Double taxation treaties

- z) How is elimination of double taxation regarding athletes / artists generally implemented when there is a double taxation treaty? (exempt/credit/deduction).

Around 80% of the Brazilian DTCs allow a deduction. The other 20% allow a credit.

- aa) How is the issue handled when a double taxation treaty does not exist?

If the other country allows a deduction/credit in its domestic legislation, Brazil also allows it (reciprocity principle). If it does not, double taxation occurs.

bb) Is there a limit amount for the income to be taxed?

This will depend on the nature of each payment, and the existence or not of a DTC.