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Tax Treatment of professional football players remuneration in Germany and Italy. A comparative and EU analysis of a sector with tax gaps from a fiscal and administrave angle.

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(Ricercatore a tempo determinato presso l'Università degli Studi del Sannio di Benevento)

Summary

Abstract

Within the European Union, football's professionals are operating on the EU internal market. The internal market and the Treaty freedoms necessitate levelled regulatory and supervisory grounds for professional football's key actors. It can be stated that regulatory and supervisory playing fields in professional football are unlevelled. With regard to professional football clubs and football agents, the rules to approach the internal market and to provide their respective services within the internal market, as well as supervisory practices, can diverge from Member State to Member State, possibly hindering access to the internal market subject on the place of entry, and thereby hindering the establishment and functioning of a true internal market.

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1. Introduction into the subject matter.

The Sport field represents a large and strong-growing economic sector, already accounting for more than 2% of total European gross domestic product (GDP) and almost 3% of employment within the European Union (EU). As the world's leading, most commercialized and mediatized sport, football occupies the most important place within the sports industry and continues to grow. It must be stated at this point that the respective players of football are still active on the EU internal market. With regard to the players in professional football, the internal market and the freedoms enshrined in the Treaty require uniform regulatory and supervisory conditions. However, the regulatory and supervisory framework in professional football is inconsistent in practice. Moreover, the rules governing access to the internal market and the provision of their respective services in the internal market, as well as supervisory practices from one Member State to another, may vary for professional football clubs and football intermediaries. This may hinder access to the internal market depending on the place of entry into the internal market and thus the establishment and functioning of a genuine internal market. The legislator should align the regulatory and supervisory framework and introduce uniform, harmonised and high-quality good governance rules for football intermediaries and professional football clubs. This could be achieved, on the one hand, by introducing an EU licensing system (including anti-money laundering legislation) and an appropriate monitoring system and, on the other hand, by handling appropriate sanctions in the event of non-compliance. It should also be noted at this point that both the tax and social security treatment of the remuneration of professional footballers contribute to unequal conditions of competition in Europe. There are different approaches to the taxation and social security status of professional football in the EU. However, studies carried out by the EU Commission indicate a common denominator of the countries. All the countries studied are united in their diversity and at the same time they all pursue a common goal. Member States have different approaches to taxing players, but most recognise the importance of an attractive tax system for an ever-growing industry. The aim pursued by the EU Commission in several studies concerned the investigation of the tax treatment of the remuneration of professional footballers within different Member States.

An attempt is being made in several selected Member States to examine the tax treatment of match salaries in which top- or lower-tier football competitions take place. Some countries, such as Belgium, Austria, France, Germany, Italy, the Netherlands, Portugal and Spain, which are subject to the relevant investigations, are detailed. Due to the fact that several factors can play a role, a comparison of the tax treatment of player salaries in different countries is not self-evident, In the countries examined, with regard to the comparison made by the EU Commission regarding the tax regulations for players, mainly on the general tax framework and the reasons for

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the existing framework. Several studies have attempted to compare the tax treatment of players' remuneration in these countries listed above with the normal tax practice of these countries for non-sporting taxpayers.

The reasons for the special tax regime are determined as soon as the normal tax practice differs from the tax regime for football players. The respective country-specific results are compared regarding a possible common European approach. The diversity of the Member States is united. This makes it quite difficult to compare the individual tax burden of a football player on a country-by-country basis, as it depends on the amount of salary, the type of remuneration, the application (or non-application) of certain tax incentives and many other parameters. For this reason, the tax situation of professional footballers must be assessed individually, some indications are given that must be taken into account when examining the tax situation of football players: the (former) tax residence, the amount of salary, the composition of the remuneration package, the availability of other types of income, the question of whether or not they receive income from abroad, and so on, it is essential to consult the tax investigation of football players. Normally, players are subject to a "normal" level of taxation compared to other similarly paid professionals in this Member State and do not benefit specifically from tax incentives compared to other taxpayers.[1]It is particularly noteworthy at this point that in the Member States where football players benefit from tax incentives, other taxpayers (often qualified foreigners or sectors such as the R&D sector or the sports industry in general) also have access to tax incentives. Most (high-earning) players are always subject to the highest income tax rates. Countries take a different approach to determining the tax base. In this way, the Netherlands, France and (especially) Italy seem to offer greater opportunities to optimise the tax base in favour of the players. Tax excesses resulting from the misuse of tax planning seem to be combated by most Member States. Although Member States are united in their diversity, they share a common goal, at least they are aware of the impact of the tax on the competitiveness of their national football leagues. At the same time, we must not lose sight of tax competition with non-EU countries. With low-tax countries such as the United Arab Emirates (UAE) or Qatar, or with countries specifically aimed at football players, such as Turkey and (until recently) China, the EU football leagues are increasingly in competition. Most of the Member States selected for research in this study, either have specific measures in place which are an incentive to football players' income taxation (or athlete income in general), had them in place in the past or consider the introduction of these measures. Based on researches conducted from the EU, the following categories can

[1] R. Houben, A. Van de Vijver, N. Appermont and G. Verachtert, Taxing professional football in the EU. A comparative and EU analysis of a sector with tax gaps, Publication for the Economic and Monetary Affairs Subcommittee on tax matters (FISC), Policy Department for Economic, Scientific and Quality of Life Policies, European Parliament, Luxembourg, 2021, p. 9 ff.

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be distinguished: The Netherlands, France, Italy and Belgium are to be mentioned as countries that have tax incentives for the income of football players. No targeted incentives for the football industry could be found in the Netherlands, France and Italy. However, despite all the countries mentioned above, football players are granted the advantages of a fairly advantageous tax regime abroad. The football players are allowed by appropriate regulations to receive a part of their salary tax-free, which basically allows an optimization of the tax base for the income of the players. In Italy, a tax exemption of 50% applies, while in the Netherlands and France a tax exemption of 30% is possible. Belgium also has a foreign tax regime. However, this is not used by football players. This Member State provides a tax incentive in relation to payroll tax for sports clubs, whereby 80% of the payroll tax does not have to be paid to the tax administration, but can be spent by the clubs (usually on the condition that the incentive is used for the training of youth players).[2] Spain can be related to such countries, who had certain tax incentives in place. In 2004 an expatriate regime has been introduced in Spain, which is mainly known as the Beckham-law. This regime allowed for the qualification as tax non-resident for football players migrating to Spain and the use of preferential tax rates. As of 2015, the regime can no longer be applied by football players. Portugal can be mentioned as one of those Countries with specific tax regimes, albeit not applicable to football players. In 2009 Portugal introduced the non-habitual tax resident. Portugal introduced the non-habitual tax resident regime in 2009. This regime amongst others allows skilful workers to benefit from a preferential 20% tax rate on employment income. This highly beneficial tax regime is not open for football players, albeit regretted in legal doctrine, Germany represents one of those Countries with no specific tax regimes.[3] Germany does not have any specific income tax regime in place from which professional football players could benefit. From an EU perspective, the development of policies to tax the remuneration of professional footballers is not self-evident, for various reasons: the issues underlying the matter are cross-cutting and affect different areas and aspects of (personal) income taxation, and above all: the EU's legislative room for manoeuvre in matters of direct taxation is subject to several important limitations, of which the most important is undoubtedly the requirement of unanimity in the Council on matters of direct taxation and the fact that the European Parliament is not a 'co-legislator' on such issues.[4]

[2] R. Houben, A. Van de Vijver, N. Appermont and G. Verachtert, Taxing professional football in the EU. A comparative and EU analysis of a sector with tax gaps, Publication for the Economic and Monetary Affairs Subcommittee on tax matters (FISC), Policy Department for Economic, Scientific and Quality of Life Policies, European Parliament, Luxembourg, 2021, p. 9 ff.

[3] For a deeper understanding on the principles of direct taxation within the European Union compare: M. Lang/P.Pistone/J.Schuch/ C.Staringer, Introduction to European tax Law: Direct Taxation.

[4] For a deeper understanding on the principles of direct taxation within the European Union compare: M. Lang/P.Pistone/J.Schuch/ C.Staringer, Introduction to European tax Law: Direct Taxation.

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This problem is exacerbated by the fact that issues of personal income taxation, such as for example the taxation of players' salaries, do not seem to play a major role on the agenda of the European Commission and the Council. EU initiatives are currently limited to initiatives that are conducive to Member States' approaches. These actions should initially focus on building knowledge, increasing transparency and developing best practices, as not much research has been or is being done in this area. This could help Member States to improve their own national systems with a view to fair taxation of professional football across the Union, taking due account of the specificities of professional football that justify supportive tax treatment. It is advisable to put the issue on the agenda and raise awareness both in terms of research and political attention. The EU believes also that the policy approach which has been taken in the case of the Code of Conduct for Business Taxation would also lend itself well to address the challenges posed by the tax treatment of professional football players and, more in general, the challenges posed by personal income taxation in the EU. Active involvement of the Union of European Football Associations (UEFA), its member associations of EU Member States and other football internal stakeholders in a Code of Conduct-like mechanism would be a strong signal towards policy makers that the football pyramid itself is engaged towards a fair and benchmarked taxation of professional football, for the greater good of all stakeholders, belonging to the football pyramid and civil society alike. In addition to the foregoing, the active involvement and cooperation of the professional football sector can also be pursued through dedicating additional attention to matters of compliance and taxation in the cooperation agreement concluded between the European Commission and the UEFA, concluded in February 2018.[5] The EU legislator should introduce uniform harmonised high-standard good governance rules for football agents and professional football clubs through a EU license system, in addition to an adequate monitoring system and appropriate sanctions in case of non-compliance. This suggestion deserves further attention at EU policy making level. With the growing economic and social importance of sports and increasing profits that can be made out of sports, money now exerts a strong influence on the world of sports.

The influx of big money has positive effects such as an increase of sport facilities and their availability to a larger number of people, yet this money also brings negative consequences. There is a higher risk of fraud and corruption given the amount of money at stake. Sport also can be used as a channel to launder dirty money. Sports

[5] R. Houben, A. Van de Vijver, N. Appermont and G. Verachtert, Taxing professional football in the EU. A comparative and EU analysis of a sector with tax gaps, Publication for the Economic and Monetary Affairs Subcommittee on tax matters (FISC), Policy Department for Economic, Scientific and Quality of Life Policies, European Parliament, Luxembourg, 2021, p. 10 ff.

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governing bodies as well as national and international authorities recently expressed their concerns on the inflow of dirty money into the sporting industry. The EU White Paper on Sport – the first EU Community document to recognise the importance of sport in European society – which was published in 2007 – stated, "Sport is confronted with new threats and challenges, such as commercial pressure, exploitation of young players, doping, corruption, racism, illegal gambling, violence, money laundering and other activities detrimental to the sport. The issue of money laundering in professional football can only be addressed effectively through European legislation.

Ideally, this is done via the introduction of a EU license system, of which anti-money laundering legislation forms part. The alternative is to include professional football in the EU anti-money laundering legislation as a separate initiative. The national regimes all recognise the importance of an attractive tax regime for professional football as a continuously growing industry. Most of the Member States selected for research, either have specific measures in place which are an incentive to football players' income taxation (or athlete income in general), had them in place in the past or consider the introduction of these measures. Benchmarking the domestic regimes towards a fair, minimum level of taxation throughout the EU, based on the average tax pressure for professional football in the EU, is valuable in view of creating levelled regulatory playing fields. When a Member State would redesign its tax treatment for professional football from this perspective, it should, however, be mindful of the fact that a too drastic tightening up of the tax (and social security) treatment of professional sports, as the case may be, could have a disproportionate negative effect on professional football and professional's football corporate social responsibility initiatives, vis-à-vis other Member States. Taxation should be set at a fair level, whilst preserving competitive balance and assuring continuation of corporate social responsibility initiatives.

Despite the economic and societal importance of the professional football sector, remarkably little attention has been dedicated to the fiscal (and related regulatory) framework surrounding professional football. This topic should be placed on the agenda and awareness should be raised, both as a matter of research and as a matter of generating policy attention. The policy approach which has been taken in the case of the Code of Conduct for Business Taxation would also lend itself well to address the challenges posed by the tax treatment of professional football players and, more in general, the challenges posed by personal income taxation in the EU, for example by setting up a 'Code of Conduct-like mechanism' for personal income taxation that also pays particular attention to the case of taxation of professional football players.

A strong signal towards policy makers would be set out through an active involvement of the UEFA, its member associations of EU Member States and other football internal stakeholders merging in a Code of Conduct-like mechanism,

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demonstrating that the football pyramid itself is engaged towards a fair and benchmarked taxation of professional football. The active participation of the professional football sector can also be continued by paying additional attention to compliance and taxation issues in the cooperation agreement concluded between the European Commission and UEFA. The income tax treatment of football clubs themselves deserves follow-up investigations, as does the related question of the choice of legal entity and its impact on the applicable tax system, issues related to the use of fan tokens and their role in player compensation packages, developments in the use of image rights regulations, the social security treatment of professional footballers.[6]

2.The expansion of the football economy.

Sport is a large and fast-growing sector of the economy that already accounts for more than 2% of Europe's total GDP and almost 3% of employment in the EU,[7] with a share in the national economies, which is comparable to agriculture, forestry and fisheries combined. The sport industry's economic and social strengths as a tool to tackle the economic crisis caused by the COVID-19 pandemic should not be underestimated. Within the sports economy, football, as the world's leading, most commercialised, and mediatised sport, takes the most prominent place. In season 2018/19, the European football sector's market revenue amounted to EUR 28.9 billion.[8] Therefore, governments should have a special interest in protecting jobs in sport as an industry with a strong economic impact in terms of employment and its share of GDP.

The associated social benefits of sport will contribute to the rebuilding of European societies during and after the crisis. Also, the SHARE initiative[9] has been a steadfast advocate of the relevance of sport for regional development through its impact on a number of key policy areas such as innovation and research, social cohesion and inclusion, territorial regeneration and attractiveness or environmental protection, in particular as an effective means of attaining the objectives of EU Cohesion Policy and the European Structural and Investment Funds.

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[6] R. Houben, A. Van de Vijver, N. Appermont and G. Verachtert, *Taxing professional football in the EU. A comparative and EU analysis of a sector with tax gaps,* Publication for the Economic and Monetary Affairs Subcommittee on tax matters (FISC), Policy Department for Economic, Scientific and Quality of Life Policies, European Parliament, Luxembourg, 2021, p. 10 ff.

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

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

[9] https://ec.europa.eu/sport/share-initiative_en.

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It has produced several papers[10] highlighting the important contribution that sport and physical activity can make to achieve these objectives. Moreover, football is the most popular sport watched world wide.[11]Furthermore, football accounted for 40.6% of global sports media rights in 2018.[12] Since then, notwithstanding the COVID 19 crisis, these numbers will not have decreased.[13] On the contrary, the football economy has not yet reached its zenith. The growing demand for live sport events[14], the raising globalization of football[15], technological progress[16], the interest of global tech companies in sports media rights[17], an evolving media landscape[18], continuing growth in media rights revenue for the professional football sector and a further influx of capital from various stakeholders, including private equity investors[19], are but some of the factors that will likely stimulate further growth of the football economy.[20] This can be demonstrated by taking a glimpse at the revenues of the biggest five football leagues in Europe ,which have been steadily rising over the years.[21]

2.1 Main actors in the football economy.

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

[10] https://keanet.eu/projects.

[11] Nielsen, SPORTS, *World Football Report 2018*; GLOBAL WEB INDEX, Sports around the World 2018.

[12] SPORTBUSINESS CONSULTING, Global Media Report 2018.

[13] R. Houben, A. Van de Vijver, N. Appermont and G. Verachtert, *Taxing professional football in the EU. A comparative and EU analysis of a sector with tax gaps,* Publication for the Economic and Monetary Affairs Subcommittee on tax matters (FISC), Policy Department for Economic, Scientific and Quality of Life Policies, European Parliament, Luxembourg, 2021, p. 11 ff.

[14] Sport Business Consulting, Global Media Report 2018.

[15] Nielsen, SPORTS, *World Football Report 2018*; GLOBAL WEB INDEX, Sports around the World 2018.

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

[17] Pay TV Innovation Forum, *The Global Market for Premium Sports O T T S e rv ice s – S pe cial Re port*, J u ly 2019, http://files.clickdimensions.com/nagracom-adglw/f iles/sp orts ottreport.pdf.

[18] PAY TV IN N O V ATIO N F O RUM, *T he Global M ark e t f or Pre mium S ports O T T S e rv ice s – S pe cial Re port*, J u ly 2019.

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

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

[21] R. Houben, A. Van de Vijver, N. Appermont and G. Verachtert, *Taxing professional football in the EU. A comparative and EU analysis of a sector with tax gaps,* Publication for the Economic and Monetary Affairs Subcommittee on tax matters (FISC), Policy Department for Economic, Scientific and Quality of Life Policies, European Parliament, Luxembourg, 2021, p. 11 ff.

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engine of professional football, provide sportive and entertainment services to clients (fans) via football matches live in stadium and broadcasted via media against a fee. Football clubs are traditionally anchored into their region of incorporation, with strong local and regional roots closely linked to the club's core values. Within the football economy players play a fundamental role. Players are employed by football clubs, in exchange for salary, predominantly to play the game of football. The quality of the players stands in correlation with the performance of the club: the better the players, the better the club, both on and off the pitch. On the business front, the better a club performs, the more revenue it will generate, such as media rights revenue, entrance bonus and prize money for participation in UEFA club competitions, sponsorship deals and match day revenue. Player transfers are often also a contributing factor to a club's business performance. A significant number of clubs, so called 'educational clubs', generate substantial revenue through player transfers. Basically, the *rationale* is to educate own youth players and/or invest in early career players, subsequently to improve their quality and performance, and lastly to realize the added value via a transfer to another club, usually in a higher segment of the market.[22] Nowadays, a frequent interconnection between football players and football clubs is represented by football agents.[23] Football agents offer intermediary services to clients, both clubs and players, foremost regarding player transfers, for a fee. Professional football is ruled and controlled by football's governing bodies. These operate mainly within a hierarchical structure.[24]Although this pyramid structure has developed itself towards a more horizontal network of football shareholders, the traditional members of the pyramid are still very much in the leading position. The International Federation of Association Football (FIFA) is placed at the apical position, the international governing body of football at a global level. UEFA is the governing body of football for the European continent. At the domestic level, national football federations organize and regulate football. In theory clubs and football players could decide themselves to leave this hierarchy and organize a competition of their own. The practice highlights that this is extremely difficult, as is shown for example by the recent Super League breakaway league attempt by several top flight Italian, Spanish and UK clubs. Soon after its endeavour,

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

[23] R. Houben, A. Van de Vijver, N. Appermont and G. Verachtert, *Taxing professional football in the EU. A comparative and EU analysis of a sector with tax gaps*, , European Parliament, Luxembourg, 2021, p. 11 ff.

[24] J. KITCHING and P. FIDA, "International Federations" in N. DE MARCO QC (ed.), *Football and the Law*, Haywards Heath, Bloomsbury Professional, 2018, p. 25.

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this attempt was unsuccessful, receiving serious crosswind from within the football pyramid, and from others key actors like politicians. In Europe, football's key actors are active on the EU internal market. Football agents e.g., offer their services across the Union (and beyond) and have European and/or global client portfolios. Professional football clubs and players are active on the internal market given their ability to play in European competitions.[25]In addition, their fan base stretches across Europe and even the globe.[26]Specifically as regards clubs, the increasing cross-border acquisitions of multiple professional football clubs by e.g. sports holding companies, leading to multinational ownership and directorship,and the recruitment of players and staff from across Europe and even the globe, further adds to the cross-border nature of their activities.[27] Within the internal market, football's key actors enjoy the Treaty freedoms. For professional football clubs and football agents, the freedom to provide services is most relevant. For players, the free movement of workers' principles are key.

2.2 The arising requirement regarding uniform good governance principles within the EU.

The internal market and the Treaty freedoms require levelled regulatory and supervisory fields for professional football's actors. In practice, however, regulatory and supervisory playing fields in professional football are unlevelled. As regards professional football clubs and football agents, the rules to access the internal market and to provide their respective services within the internal market, as well as supervisory practices, can differ from Member State to Member State. Arguably, these different approaches hinder access to the internal market dependent on the place of entry, thereby hindering the establishment and functioning of a true internal market. To give more impetus to those actors that are leading and paving the way towards better governance in professional football, it is advocated that the legislator should come to their aid to level the regulatory and supervisory playing field to acceptable levels, so that actors that are currently under performing are brought to higher levels of governance and compliance.[28]

The idea is that, for the benefit of society and of the sector of professional football as a whole, it is important that all professional football clubs and football agents meet high governance standards. More specifically, uniform harmonised high-standard good governance rules for football agents and professional football clubs are suggested, in addition to an adequate monitoring system and appropriate sanctions

[25] Champions League, Europa League, Conference League.

[26] In particular the top 5 domestic football competitions in Europe are watched by fans throughout Europe and beyond: GLOBAL WEB INDEX, Sports Around the World, 2018, p. 12.

[27] R. Houben, A. Van de Vijver, N. Appermont and G. Verachtert, *Taxing professional football in the EU. A comparative and EU analysis of a sector with tax gaps*, , European Parliament, Luxembourg, 2021, p. 11 ff.

[28] See more elaborate R. HOUBEN and S. NUYTS, A new deal for professional football in the EU, Cambridge, Intersentia, 2021, 52 p.

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in case of non-compliance. From a policy perspective, such approach would boil down to a mentality shift.

Indeed, now, policy making regarding professional football is often inspired by 'negative action', as a repressive response to root out abuses and irregularities by some. Of course, it is important to monitor compliance and sanction actors who infringe laws. Yet there is more to it than repression alone. Policy action should also be focused on prevention of abuses and irregularities through creating a legally certain environment with high standards of governance and compliance, and, of course, an adequate sanctioning apparatus. Yet, such a sanctioning apparatus should only be the tailpiece of policymaking, which should fundamentally be oriented towards prevention. In other words: when it burns it is important to be able to put out the fire, but it is a lot better when extinguishing capabilities are accompanied and preceded by sound prevention schemes.[29] It is argued that this requires EU legislative intervention: the cross-border nature of professional football's key actors means that a true internal market cannot be achieved by actions taken by Member States alone.[30] Because of several reasons and mostly because of the required help needed by the Member States, the EU is requested and urged to take action and harmonise Member States' laws to level the regulatory and supervisory playing field, the plea continues.[31]In this prospective it is advisable to restate the important fact, that the mere finding of disparities between national rules is not sufficient to justify EU harmonisation. It is different, however, where there are differences between the laws, regulations or administrative provisions of Member States which obstruct the fundamental freedoms and thus have a direct effect on the functioning of the internal market.

Also, future obstructions to trade warrant EU intervention, insofar as the emergence of such obstructions is likely and the EU measure in question is designed to prevent them. The European Court of Justice in the ruling C-358/14, with regard of this context clearly stated that, although the mere finding of differences between national rules is not sufficient to justify the use of Article 114 TFEU, the situation is different in the case of differences between the laws, regulations and administrative provisions of the Member States which are having the effect of affecting the fundamental freedoms and thus having a direct impact on the functioning of the internal market.[32]Moreover, according to settled case-law, although Article 114 TFEU

[29] R. Houben, A. Van de Vijver, N. Appermont and G. Verachtert, *Taxing professional football in the EU. A comparative and EU analysis of a sector with tax gaps*, , European Parliament, Luxembourg, 2021, p. 16 ff.

[30] R. HOUBEN and S. NUYTS, *A new deal for professional football in the EU*, Cambridge, Intersentia, 2021, 52 p.

[31] R. Houben, A. Van de Vijver, N. Appermont and G. Verachtert, *Taxing professional football in the EU. A comparative and EU analysis of a sector with tax gaps*, , European Parliament, Luxembourg, 2021, p. 16 ff.

[32] see, to that effect, Germany v Parliament). and Council, C-376/98, EU:C:2000:544, paragraphs 84 and 95, British American Tobacco (Investments) and Imperial Tobacco, C-491/01, EU:C:2002:741, paragraphs 59 and 60, Arnold André, C-434/02, EU:C:2004:800, paragraph 30, Swedish Match, C-210/03, EU:C:2004:802, paragraph 29,

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may be relied on as a legal basis to prevent the emergence of new obstacles to trade as a result of a heterogeneous development of national legislation, the emergence of such obstacles must be likely and the measure in question must have as its object its avoidance.[33] The articles of the Treaty relating to the free movement of goods, persons, services and capital are considered so fundamental that any restriction, even minor, of that freedom is prohibited,[34] unless the restrictions are too uncertain and indirect for the restriction to be regarded as being capable of hindering that freedom. The EU Court of Justice notably in C-483/12 stated that similarly, as regards Articles 56 TFEU and 57 TFEU on the freedom to provide services, also referred to by the referring court, it is sufficient to note that the legislation at issue applies to all economic operators operating in the national territory, that it is also not intended to regulate the conditions governing the provision of the services provided by the undertakings concerned and, finally, that the restrictive effects which it might have on the freedom to provide services are: are too uncertain and indirectly for the obligation laid down thereon to be regarded as capable of hindering that freedom.[35] As regards professional football clubs and football agents, (future) domestic measures clearly (are likely to) create differences sufficiently certain and direct to obstruct the freedom to provide services within the internal market.

In this regard, as it has been already stated, the "Harmonised National Legislation Model" represents the aim, towards which the Member States are oriented. In the EU, the regulation of employment relations and access to a profession is a matter for national legislation.[36]Under Article 153 TFEU, the Union has only the competence to support and complement the activities of the Member States. In football, some Member States regulate the activity of sports agents through national law. For example, under French Law[37], an agent must hold a licence which is obtained under strict conditions, they must comply with certain good practice rules and they must submit to the disciplinary procedures of the sport association.

The system devolves authority to the French National Association to regulate the profession of football agents, facilitating sanctioning and enforcement. However, whilst the adoption of national law on the regulation of intermediaries may be effective in increasing transparency, quality and enforcement, the adoption of law by

Germany v Parliament and Council, C-380/03, EU:C:2006:772, paragraph 37, and Vodafone and Others, C-58/08, EU:C:2010:321, paragraph 32).

[33] See British American Tobacco (Investments) and Imperial Tobacco, C-491/01, EU: C:2002:741, paragraph 61, Arnold André, C-434/02, EU:C:2004:800, paragraph 31, Swedish Match, C-210/03, EU:C:2004:802, paragraph 30, Germany v Parliament and Council, C-380/03, EU:C:2006:772, paragraph 38, and Vodafone and Others, C-58/08, EU:C:2010:321, paragraph 33).

[34] see CJEU 1 April 2008, C-212/06, ECLI:EU:C:2008:178, par. 52; CJEU 21 June 2016, C-15/15, par. 37

[35] See, by reason, judgment in Semeraro Casa Uno and Others, EU:C:1996:242, paragraph 32).

[36] R. Houben, A. Van de Vijver, N. Appermont and G. Verachtert, *Taxing professional football in the EU. A comparative and EU analysis of a sector with tax gaps*, , European Parliament, Luxembourg, 2021, p. 16 ff.

[37] Loi No. 84-610 du Juillet 1984 relative a`l'organisation et a`promotion des activités physiques et sportives.

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individual countries may cause further fragmentation on the European market and a lack of uniformity. Thus, a harmonised national legislative approach might be considered in which all EU/European countries adopt legislation with similar requirements. At EU level, Article 165(4) TFEU specifically excludes the harmonization of national laws applicable to sport, but Article 114 TFEU could be employed as a harmonizing tool should harmonization of agent laws be considered necessary for the establishment and functioning of the internal market. With regard of the possible future concerning football matters and the EU legislator it can be stated that, the EU seems nowadays, as it may have been criticised, too absent in professional football matters. In order to settle this specific problem some opinions are listed in the following for guaranteeing and providing a possible solution. There are several advantages of the harmonised national legislation model which can be summarized in the following as for example it could be able to solve issues regarding the legality of regulating the agents' profession. Other key points regard the transparency, quality and the effectiveness of enforcement, which are executed under national legislation.[38]On this behalf a dominant doctrine argues that "given the large scope of rules issued by FIFA and UEFA that potentially infringes EU (competition) law, one would expect to see a larger body of Commission regulatory practice in football".[39] In order to support the above mentioned statement one should take a look at the Europeans Parliament Resolution on the Future of Professional Football in Europe of 2007[40], which undermines and calls in this respect on the Commission to support UEFA's efforts to regulate players" agents, if necessary by presenting a proposal for a directive concerning players' agents which would include several points.

One of those points would embrace the adoption of strict standards and examination criteria before anyone could operate as a football players' agent, furthermore it foresees the requirement of transparency with regard of the agents' transactions. There is the need of the setting regarding a minimum requirement of common harmonized standards for agents' contracts, furthermore an efficient monitoring and disciplinary system by the European governing bodies has to be set in motion, the introduction of an "agents' licensing system" and agents' register; and last but not least the ending of "dual representation" and payment of agents by the player. Another doctrine[41] clearly states that, with regard to football agents, various policy reports and resolutions already suggested a legislative intervention by the EU,

[38] R. Parrish, A. Cattaneo, J. Lindholm, J. Mittag, C. Perez-Gonzalez and V. Smokvina, Promoting and Supporting Good Governance in the European Football Agents Industry, European Commission report, October 2019, pp. 63-64.

[39] Cfr. A. Geeraert, The EU in international sports governance – a principal agent perspective on EU control of FIFA and UEFA, London, Palgrave Macmillan, 2016, 107.

[40] European Parliament Resolution on the Future of Professional Football in Europe, 29 March 2007, par. 44.

[41] Cfr. Arnault, *Independent European Sport Review*, 1 October 2006, p. 131.

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the european players' agents directive ought to be implemented foreseeing the tools for appropriate sporting regulations on players' agents at European level including for instance the following topics: strict examination criteria, transparency in the transactions , minimum harmonized standards for agents contracts, efficient monitoring and disciplinary system by European sports governing bodies, the introduction of an "agents licensing system", no "dual representation", payment of the agent by the player'.[42]A harmonised approach[43] across the EU/Europe establishes a common market and provides no incentives for forum shopping. There are several disadvantages of the harmonised national legislation which can be therefore listed in the following. The prospects of this model being adopted are far fetched and remote. The model requires considerable political action and will from the stakeholders. The adoption of binding EU law is complex, time consuming and requires the agreement of many different political actors. The EU legislation may only apply within the territory of the EU. The UK, won´t be bound, because of Brexit, by such legislation in the future. Football stakeholders are not willing to shift authority to state actors. This is reflected in the result of our stakeholder survey.

On the question of whether "*Member States of the EU should regulate intermediaries through national legislation*", only 22.5% strongly agreed or agreed whilst 50% disagreed or strongly disagreed. A higher percentage (42.5%) either strongly agreed or agreed that "*the EU should regulate intermediaries through EU legislation*" whilst 30% either disagreed or strongly disagreed with this statement. In turn, 90% of respondents either strongly agreed or agreed that "*The football stakeholders should find solutions to issues concerning intermediaries (self-regulation)*". So far, these appeals didn´t accomplish any result.

2.3 EU position relating to sport matters.

Currently, the EU legislator is too absent in the business of professional football. Preferably, legislative action is taken in close cooperation with UEFA, although the EU has it´s specific competence and does not rely on UEFA. The autonomy of sports, as recognised by Article 6 and 165 Treaty on the Functioning of the European Union (TFEU), does not stand in the way of this, because the suggested EU intervention would relate to professional football's key service providers' fundamental freedom to provide economic services within the internal market without undue barriers. Therefore, the EU's legislative intervention can be based on Article 59 TFEU and Article 53 *juncto* Article 62 TFEU, relating to the free movement of services within the

[42] Cfr. Arnault, *Independent European Sport Review*, 1 October 2006, p. 131.

[43] R. PARRISH, A. CATTANEO, J. LINDHOLM, J. MITTAG, C. PEREZ-GONZALEZ and V. SMOKVINA, *Promoting and Supporting Good Governance in the European Football Agents Industry*, European Commission report, October 2019, 63-64.

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EU. In subordinated order, as *lex generalis* for the internal market, Article 114 TFEU can function as legal basis. All three TFEU connecting factors result in EU legislation adopted in accordance with the ordinary legislative procedure. Relevant in this respect is also that, from the outset, the European Commission (EC) emphasised that sporting organizations have to operate within the boundaries of EU law. In that vein, the Court of Justice of the European Union (CJEU) gradually downsized sporting organizations' aspirations for complete autonomy.[44] The rulings in among others the Bosman case and the Meca-Medina and Majcen case eroded the perception that the so-called 'sporting exception' sheltered many regulations from examination by the European institutions. The EC also emphasised from the outset that the autonomy of sporting organisations is subject to compliance with good governance principles. Hence, autonomy and good governance are inextricably linked. Sports governing bodies, including football governing bodies, that do not function according to good governance principles can expect their autonomy and self-regulatory practices to be curtailed .[45] There is now a greater interest (and expectation) across the stakeholders of sport to participate in the future direction and policy making activities of sports governing bodies (hereinafter: sporting bodies) and to have their views heard and appropriately reflected in the decisions of those bodies. In this context members/participants are acting more like consumers and becoming more demanding. Shifting demographics and societal changes within Europe and beyond require sporting bodies to consider whether existing inclusivity policies, diversity strategies and levels of representation across all groups remain appropriate and reflective of their participants and society in general.

A particular issue in this regard is the access of women to leadership positions in sports organisations within the context of the wider debate on gender in Europe and at international level. As public interest in sport has increased and the financial stakes have risen there has been a growth in the propensity of participants at all levels to pursue legal claims requiring sports bodies to adopt effective risk management practices and insurance protocols to minimise legal and financial exposure. The integrity of sport has been subject to significant challenge over recent years, inter alia given the growth of sports betting.

Match-fixing, corruption and other criminal activities have arisen in different sports in various territories across Europe and beyond. Such activities have highlighted the vulnerability of sport to match fixing and other corrupt practices. Sporting bodies are

[44] R. Houben, A. Van de Vijver, N. Appermont and G. Verachtert, *Taxing professional football in the EU. A comparative and EU analysis of a sector with tax gaps*, , European Parliament, Luxembourg, 2021, p. 17 ff.

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

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no longer able to deal with the threat and challenges to sporting integrity alone. The assistance of regulators, national governments and law enforcement agencies with their additional powers and investigative authority is needed by sports bodies to allow them to tackle the threat of match fixing and other corrupt activities, as well as appropriately structured relationships with betting operators on areas such as bet types. Increasingly, sports bodies must seek to form partnerships, engage in dialogue and cooperate with governments, European institutions and other state agencies in a range of areas and such public authorities may be more inclined to link public funding to minimum standards of good governance, particularly in relation to financial subsidies and the deployment of public money by sports bodies. The autonomy of sports bodies is now more susceptible than ever before. Interventions from the courts, national governments or regulators, commercial interests or European institutions are more likely. Indeed, in its 2011 Communication "Developing the European Dimension in Sport" the European Commission developed its position beyond that of previous comments confirming good governance is a condition for the autonomy and self- regulation of sports organisations. Owing to the positive values sport embodies, sporting bodies in many EU Member States and at EU level receive significant public funding. In relation to the use of such funds the application of good governance principles can play an important role. In short, sports bodies that do not have in place good governance procedures and practices can expect their autonomy and self-regulatory practices to be curtailed. In identifying good practice in the context of good governance for sports bodies it is important to be pragmatic, flexible and proportionate. Many different sports bodies have considered issues of good governance in their own unique context. However, this initial set of recommendations seeks to outline top level principles covering the whole sport movement (as opposed to only major governing bodies or event owners), address professional and amateur sport, embrace team sports and individual disciplines, assist large and small sports bodies and not deter volunteers from taking part in sport. Over the past years football governing bodies suffered severe governance issues,[46] including FIFA-Gate[47]; domestic governance and/or ethics issues; and transparency issues related to individual club data on licensing and financial fair play (FFP) procedures, detailed player transfer information, and details of representation contracts with football agents, which are neither public nor easy to obtain. These issues have made the case for curtailing

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

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

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football governing bodies 'autonomy a legitimate one. In this respect, scholars note that the COVID pandemic may have shifted the relative bargaining power in favour of public authorities in the complex network of sport, further testing the limits of autonomy of sport.[48]

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

Compared to clubs, players have the advantage that they are mobile and can move around. Hence, from a practical perspective, players benefit from regulatory competition between Member States, as such competition allows them to cherry-pick a club in a country that has, from the perspective of the player, an advantageous regulatory framework.[49] Clubs do not have the same liberty, as they are intrinsically linked to a geographical location, without any real possibility to move. Notwithstanding occasional initiatives, such as cup matches played abroad. From that perspective, unlevelled regulatory playing fields are not so much an issue for players, but all the more for clubs, as set out above and will be further elaborated hereinafter. What makes a Member State advantageous from the perspective of a player?

Arguably, the tax and social security treatment of a football players' remuneration is a key factor. In so far players' remuneration is taxed favourably and/or enjoys a favourable treatment under social security laws in a certain Member State, players can be more inclined to play in that Member State instead of in another Member State, where he/she would receive a lower net amount of remuneration because of higher taxes and/or higher contributions to that state's social security scheme.[50]The tax rates will be further analysed in the next paragraph.

Of course, the tax and social security treatment of players' remuneration is not the only element in a players' decision making as to for which club he/she wants to play. Also other, more personal factors can be in play, such as familial or nationalistic motives, getting more pitch time, being end of career, regarding a club as a stepping-stone towards a more prestigious national competition, etc. Yet, nevertheless, it is

[48] B. GARCIA, M. JAMES, D. KOLLER, J. LINDHOLM, D. MAVROMATI, R. PARRISH and R. RODENBERG, "The impact of Covid-19 on sports: a mid-way assessment", Int. Sports Law J. 2020, 115–119.

[49] R. Houben, A. Van de Vijver, N. Appermont and G. Verachtert, *Taxing professional football in the EU. A comparative and EU analysis of a sector with tax gaps*, , European Parliament, Luxembourg, 2021, p. 20 ff.

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

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clear that the tax and social security treatment of players' wages will be paramount in most cases and have a large impact on the personal financial situation of the player. As a result, indirectly, but certainly, the tax and social security treatment of a player's remuneration also impacts the ability of clubs to attract top notch talented players. In short, players can be more inclined to play for a club located in a Member State with an advantageous regulatory framework hosting a top tier competition. Throughout the EU there are various approaches towards the taxation and social security position of professional football. Nevertheless, a common thread, that will become apparent throughout this study, is that all in scope countries are united in diversity, whilst pursuing a common aim: Member States take a different approach to players taxation[51], but most realise the importance of a n attractive tax regime for a continuously growing industry. To the extent national regimes approach this common aim differently, it could be argued that they contribute to unlevelled regulatory playing fields for clubs within the internal market, which adds to distorted competition in the business of professional football.
Regardless how matters stand, levelling the tax and social security playing field for professional football throughout the EU is in any event less evident as levelling the regulatory and supervisory playing fields for professional football clubs and football agents in the form of harmonised license requirements. This has everything to do with the TFEU treatment of tax and social security matters. Such matters are traditionally Member State strongholds, for which the possibility to harmonize laws is limited. In accordance with Article 115 TFEU, harmonization of direct taxation, such as the taxation of players' wages, requires unanimity among Member States, which is, obviously, not easy to obtain. As regards social security matters, on the basis of Article 153 TFEU, the EU can solely support and complement the activities of the Member States, leaving Member States behind the steering wheel.

2.5 Taxation and Migration: Evidence and Policy Implications.
Tax rates differ substantially across countries and across locations within coun- tries. An important question is whether people choose locations in response to these tax differentials, thus reducing the ability of local and national governments to redistribute income and provide public goods. Due to globalization and the lowering of mobility costs, it has become increasingly important to pay attention to mobility responses when designing tax policy.

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

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In this paper, we review what we know about mobility responses to personal taxation and discuss the policy implications. Our main focus is on the mobility of people, especially high-income people, but we will also discuss the mobility of wealth in response to personal taxes. High-income individuals sometimes move across borders to avoid taxes. The media is filled with examples of famous people who, often by their own admission, engage in such tax avoidance behaviour. The Rolling Stones left England for France in the early 1970s in order to avoid the exceptionally high top marginal tax rates—well above 90 percent—in the UK at the time. Many other British rock stars moved to lower tax jurisdictions, including David Bowie (Switzerland), Ringo Starr (Monte Carlo), Cat Stevens (Brazil), Rod Stewart (United States), and Sting (Ireland). In more recent years, actor Gérard Depardieu moved to Belgium and eventually Russia in response to the 75 percent millionaire tax in France, while a vast number of sports stars in tennis, golf, and motor racing have taken residence in tax havens such as Monte Carlo, Switzerland, and Dubai.[52]
While these anecdotes are suggestive, two caveats prevent us from drawing any broader conclusion from them. First, all of the examples are from the sports and entertainment industries. These industries may feature particularly high cross-border mobility, both because they involve little location-specific human capital and because workers tend to be less tied to specific firms. Second, some of the examples reflect location responses to extreme top tax rates. The key question—and the one with which we are preoccupied in this paper—is if income tax rates distort the location choices of broader segments of workers? And if they do, how large are the responses and what are the implications for policy? These questions are particularly pertinent due to the recent proposals in the United States and elsewhere to raise the taxation of income or wealth substantially at the top of the distribution.

2.6 Mobility of People.

The idea that tax policy may affect the location decisions of individuals has a long tradition in economics. In fact, tax-induced mobility is a central mechanism in several strands of economic theory. In the local public finance literature, starting with the seminal contribution of Tiebout (1956), migration responses to local taxes and public goods are the fundamental force that governs the sorting of individuals across jurisdictions.
Since the contributions of Rosen (1979) and Roback (1982), the field of economic geography has focused on spatial equilibrium models in which the assumptions placed on migration elasticities are key determinants of the spatial allocation of factors and the geographic variation in prices. The optimal taxation literature has

[52] H. KLEVEN, C. LANDAIS, M. MUNOZ and S. STANTCHEVA, "Taxation and Migration: Evidence and Policy Implications, *Journal of Economic Perspectives* 2020, 119-142.

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also emphasized that migration responses can have important effects on tax design and may trigger socially inefficient tax competition in uncoordinated tax settings ().[53] Information on migration patterns combined with precise measures of earnings and tax rates in different locations is hard to come by.[54] Traditional surveys either lack this type of information or are statistically underpowered due to small sample sizes. One way of circumventing this data limitation is to focus on alternative outcomes, such as wages, and test structural predictions of migration models under different assumptions about mobility. Feldstein and Wrobel (1998) provide an early example of this approach.

Their premise is the following. In the absence of heterogeneity in preferences for different locations, a long-run equilibrium equalizes utility across locations for all individuals and therefore fixes the net-of-tax wage rate in each location. In this case, there is perfect mobility: an increase in the tax rate in each location must be exactly offset by an increase in the wage, because otherwise every individual would move out of that location. Testing if the elasticity of wages with respect to the net-of-tax rate equals minus one is therefore a test of perfect mobility (that is, an infinite mobility elasticity). Using cross-sectional variation in the progressivity of state income taxes in the United States, Feldstein and Wrobel estimate very large wage responses to the net-of-tax rate and cannot reject an elasticity of minus one. However, their large standard errors imply that, in several specifications, they also cannot reject the opposite extreme of small or zero elasticities.

The recent literature has taken two different approaches to overcome these data challenges. The first approach is to focus on specific segments of the labour market for which detailed migration information is available from external sources. Examples include football (soccer) players where rich biographical information allows one to reconstruct migration patterns[55], and inventors whose location decisions can be inferred from patent records.[56] The second approach is to find contexts in which administrative data with information on migration is available. For example, researchers have used tax or social security records from countries with a federal structure where the internal migration across tax jurisdictions can be observed.[57] Another possibility is to study countries, typically Scandinavian countries, that keep migration records of all movements in and out of the country that can be linked to administrative tax records.[58]

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[53] for example, Mirrlees 1982; Bhagwati and Wilson 1989

[54] H. Kleven, C. Landais, M. Munoz and S. Stantcheva, "Taxation and Migration: Evidence and Policy Implications, *Journal of Economic Perspectives* 2020, 119-142.

[55] Kleven, Landais, and Saez 2013.

[56] Akcigit, Baslandze, and Stantcheva 2016; Akcigit et al. 2018; Moretti and Wilson 2017.

[57] (Young et al. 2016; Martinez 2017; Agrawal and Foremny 2019)Young et al. 2016; Martinez 2017; Agrawal and Foremny 2019.

[58] Kleven et al. 2014.

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Where suitable migration data is available, the next challenge relates to the tax variation used to estimate migration responses. This challenge is twofold. First, one needs to measure correctly the tax incentive that governs location decisions. As with other extensive-margin decisions, location decisions depend on the *average* rather than the marginal tax rate, and average tax rates are not always straightforward to calculate. Moreover, for workers at the lower end of the income distribution, the relevant average tax rate depends, not just on the tax system, but also on the potentially complicated system of welfare and social insurance programs. Second, one needs to find tax variation that is plausibly orthogonal to other factors affecting individual location choices—including local labour market conditions, local amenities, and public goods—and sufficiently large to generate effects that can be detected in the data. Determined by these challenges, much of the recent literature has focused on people at the top of the earnings distribution. Beyond providing estimates of mobility responses for a segment of the population that may be particularly important for government revenue and economic efficiency, focusing on top earners offers important advantages. First, for workers with very high earnings, the top marginal tax rate is a reason- able proxy for the average tax rate and is relatively easy to compute across countries and over time.[59] Specifically, the top marginal tax rate reflects the combined wedge from the top-bracket personal income tax rate, uncapped social security taxes on workers and firms, and consumption taxes (value- added, sales and excise taxes). Second, because of income tax reforms, top marginal tax rates exhibit substantial variation over time, both within and across countries, offering opportunities to identify the causal effect of taxes on migration. In particular, the introduction of preferential tax schemes to high-income foreigners in several countries provides useful sources of quasi-experimental variation for studying mobility responses. There is growing evidence that taxes can affect the geographic location of people both within and across countries.

This migration channel creates another efficiency cost of taxation with which policymakers need to contend when setting tax policy. At the same time, we have cautioned against overusing these empirical findings to argue in favour of an ineluctable reduction in the level of taxation or progressivity. Let us reiterate two key caveats. First, while the mobility responses documented in some of the recent literature are striking and perhaps surprisingly large, they pertain to specific groups of people and to specific countries. Although we are far from having to rely on the celebrity anecdotes presented in the introduction, data limitations and identification challenges have forced researchers to study the migration flows in specific countries

[59] H. KLEVEN, C. LANDAIS, M. MUNOZ and S. STANTCHEVA, "Taxation and Migration: Evidence and Policy Implications, *Journal of Economic Perspectives* 2020, 119-142.

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(like Denmark) or to focus on a specific population internationally (like superstar football players or inventors).

We are still lacking systematic evidence on the mobility elasticities of the broader population and across different types of countries. Second, the strength of the mobility response to taxes is not an exogenous, structural entity. It depends critically on the size of the tax jurisdiction, the extent of international or subnational tax coordination, and the prevalence of other forces that foster or limit the movement of people, all of which can also be affected by policies. These forces include local or national amenities, agglomeration effects, and the provision of public goods and services. Rather than compromising redistribution or restraining free mobility in an inefficient way, these can, in a productive way, be fostered to make the country or state attractive to people.[60]

2.7 European approach regarding tax treatment of professional players' remuneration.

This paragraph evaluates the tax treatment of professional football players' remuneration within several Member States. This seems one of the most important, component of Member States' tax policies towards professional football. Other elements are, however, also important to get a more encompassing view on the disparity of the tax and social security treatment of professional football within the EU, such as the tax treatment of football clubs' income and the impact of social security and/or subsidies regimes.

To compare the effect of Member States' tax and social security treatment of professional football, research should be conducted into all these elements and all these elements should be considered. This paragraph strives to scrutinise various tax and social security treatments of professional football and to suggest and evaluate European ways forward, to avoid unfair taxation throughout the EU.[61] Because of this reason, this study focuses on the taxation of players' remuneration, leaving other factors influencing the tax and social security treatment of professional football aside for follow-up research. The tax treatment of players' remuneration is depicted in some Member States that host top or sub top football competitions. Some researches conducted at European level analysed following taxation systems within the following Member States: Belgium, France, Germany, Italy, the Netherlands, Austria, Portugal and Spain. This researches revealed that France, Germany, Italy and Spain host top competitions, whereas Portugal, Belgium and the Netherlands host sub top

[60] Zucman, Gabriel. 2013. "The Missing Wealth of Nations: Are Europe and the U.S Net Debtors or Net Creditors?" Quarterly Journal of Economics 128 (3): 1321–64.

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

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competitions.[62] For the top competitions, we also provide average salary data per club in this report.[63] Comparing the tax treatment of players' remuneration in different countries is not self-evident as multiple factors can be relevant. Players will typically enjoy a fixed wage as an employee. In practice, they often also benefit from a variety of other remuneration components such as (signing) bonus payments, allowances for costs, contributions to a pension scheme, payments for the use of intellectual property rights or advertising income and even cryptocurrencies such as club fan tokens.[64] A high marginal tax rate for salary income might disguise the beneficial build-up of an after-career pension plan. Conversely, players benefitting from low tax rates for income obtained during their career might forego on other career facilities concerning the protection of players' rights and social security.[65] Moreover, a legal framework requires implementation. Countries and their tax administration may have different approaches to enforcement of tax laws: even if two countries would have a favourable tax framework in place for income obtained from the licensing of image rights, they may have conflicting views on the (percentual) amount of income that can reasonably be obtained in this way. Football is moreover a global sport, having consequently that players will earn income for work done in their residence country as well as for work performed abroad.

Some states will easily exempt income obtained abroad, whereas others will only allow this under more stringent conditions. For reasons of feasibility and comparability, we do not intend to factor in all these elements in our analysis. In our comparison of the tax regime for players in Belgium, France, Germany, Italy, the Netherlands, Portugal and Spain, the focus will mainly lie on the general tax framework and the *rationale* behind the framework in place. We will compare the tax treatment of players' remuneration in these countries with the normal tax practice of these countries for non-sportive taxpayers. If the normal tax practice would be different from the tax regime for football players, we will identify the *rationale* behind the specific tax regime. Regarding a potential common European approach, one

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

[63] R. Houben, A. Van de Vijver, N. Appermont and G. Verachtert, *Taxing professional football in the EU. A comparative and EU analysis of a sector with tax gaps*, , European Parliament, Luxembourg, 2021, p. 21 ff.

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

[65] Eastern European countries are often perceived as low tax countries, but have a framework which does not aid social protection for p la y e rs : E Y, " tax and career facilities for professional football players in 2013.

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should compare findings between the EU Member States in scope. Throughout this comparison, we will consider recent events such as the widespread attention for the (perceived) tax optimal use of image rights by football players and the increase of so-called tax inspired moves from football players from one country to another. The results of our comparative research relate to the tax treatments of players' remuneration, but will allow to exemplify the issue of various tax treatments of professional football in various Member States also from a more general perspective, albeit that, as aforementioned, to be able to obtain a more encompassing overall view, follow-up research is required.[66] This research conveys to professional football only. Grassroots football is not addressed in this report. This study focuses on the various approaches of Member States regarding the taxation of professional football mostly from a cross- border mobility perspective. We wish to emphasize, however, that from a policy perspective this is not the only relevant perspective to evaluate the merits of a national system. Firstly, cross-border mobility is only relevant for a limited sector of the football market; for many professional players cross-border mobility is not pertinent, as they spend their entire career in domestic professional competitions, without a possibility or desire to play abroad. However, national football competitions are becoming increasingly international, as cross-border mobility of football players has increased steadily over the years.[67] Nevertheless, the debate on Member States' tax approaches should not be narrowed down to only these (top) players that are confronted with issues of cross-border mobility and from a (domestic) policy perspective, all relevant elements should be taken into account.
Taking that perspective, a beneficial tax regime that is intended to attract top players from abroad, yet is not applicable to domestic players, should probably be assessed differently than a domestic tax regime that applies to all players in a certain Member State. The former regime will clearly aim at improving inward cross-border mobility, and doing so generates a certain level of inequality between players in a certain country, whereas the latter system is not necessarily designed to improve cross-border mobility and treats all players equal within that Member State. The limited amount of empirical research in this field indeed points to the fact that, to draw in top talent from abroad, it is more cost-efficient to introduce foreigner- specific tax breaks, since many domestic players already play at home.[68]The elasticity of the number of domestic players with respect to the net-of-tax rate on domestic players is smaller, around 0.15, because the base of domestic players is much larger as most

[66] R. Houben, A. Van de Vijver, N. Appermont and G. Verachtert, *Taxing professional football in the EU. A comparative and EU analysis of a sector with tax gaps*, , European Parliament, Luxembourg, 2021, p. 21 ff.

[67] CIES Football Observatory Report n° 65, May 2021, https://football-observatory.com/IMG/sites/mr/mr65/en/.

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

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players play at home. Hence, cutting taxes on all players (foreigners and locals) is much less cost effective than cutting taxes on foreign players only.

Consistent with our rigid labour demand theory, we find that location elasticities are largest at the top of the ability distribution and negative at the bottom due to ability sorting effects, and that cross-tax location elasticities between foreign and domestic players are negative due to displacement effects. To our knowledge, the paper provides for the first time compelling evidence of a link between taxation and international migration. As shown in the case of Denmark, football players are likely to be a particularly mobile segment of the labour market, and our study therefore provides an upper bound on the migration response for the labour market as a whole. The upper bound we find is large, suggesting that mobility could be an important constraint on tax progressivity. Our estimates combined with our theoretical model can be used to estimate revenue maximizing tax rates (Laffer rates) and draw policy conclusions, especially with respect to the aggressive use in several countries of preferential tax schemes to foreigners. First, in the baseline model with flexible demand, a uniform revenue-maximizing tax rate on all players (foreign and domestic) follows a classic inverse elasticity rule as in the Mirrlees (1982) model of optimal taxation with migration. It is around 81 percent, higher than actual top tax rates. This high tax rate is obtained because about 90 percent of players still play at home and the elasticity for home players is relatively small. Second, in the rigid-demand model, this uniform revenue maximizing tax rate on all players is even higher than in the baseline. This is driven by ability sorting: any in-migration of high-ability players comes with an offsetting out-migration of lower-ability players, which reduces the ability-weighted average location elasticity in the rigid-demand setting compared to the baseline.

Third, the selective revenue maximizing tax rate on foreign players is lower than the uniform revenue maximizing tax rate and some- times significantly so. Importantly, these results are based on *uncoordinated* tax setting across countries. While our empirical results provide some normative support for preferential tax schemes to foreigners within this setting, these are beggar-thy-neighbour policies that are not optimal from the global perspective.[69] Another important rationale put forward by advocates of preferential tax rates for highly paid foreigners is that high- skill workers generate positive externalities on their co-workers and the economy at large. If such spillovers exist, they would naturally further reduce the optimal tax rate on foreign workers. Such spillovers also typically benefit one country at the expense of others and hence cannot justify low tax rates from a coordinated tax set- ting

[69] Moreover, in the case of football players, even within the uncoordinated setting and despite the large migration responses we estimate, the Laffer rates are still quite high due to displacement effects driven by rigid demand in the football market.

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perspective. We leave the estimation of such spillovers for future work.[70] Secondly, a football players' career is characterised by risks and uncertainties, such as potential injuries, and more in general short careers, given a player is typically no longer fit for duty as at his/her mid- thirties, some exceptions aside.

In the same manner, social security protection, even in event of injury, may be very limited. Hence, a professional football players' career is not comparable to a career outside of sports. These factors are relevant to our assessment of the tax and social security treatment of players' remuneration too. Additionally, they warrant a tailor-made tax and social security approach for professional football. As a side note, granting tax benefits to a certain sector, because of its specificities, is not unique to football, nor to sports; there are numerous examples of other sectors of the economy that enjoy tax benefits, e.g. in Belgium the fishery sector, the sector of night labour, R&D-activities, start- ups, etc. Thirdly, professional football clubs generally invest in youth development and community service, through numerous corporate social responsibility initiatives. At this point it is important to emphasize the interaction with grassroots football. Professional football is indebted to grassroots football, as most young players start their careers at an amateur club.

Vice versa, grassroots football is indebted to professional football, as frequently, players in higher-end grassroots football have enjoyed an education, fully or partially, at a professional football club. Besides, through corporate social responsibility initiatives professional football supports grassroots football, e.g. operationally and/or from the perspective of youth development. Fourthly, professional football is a continuously growing economic sector, that not only provides employment to football players, but also a whole set of other employees, and in its wake generates business for other economic actors too.

This is beneficial for the economy as a whole and benefits society as a whole. These are some of the elements that make the professional football sector specific, which in turn may warrant a specific, tailored regulatory approach and tax treatment. These above-mentioned key factors, enable to explain the reasons why the professional football sector in general is often granted tax benefits: as aforementioned, all-in scope Member States comprehend the importance of an attractive tax regime for a endlessly growing industry. However, this is eventually a political choice and a matter of policy. Of course, the underlying assumption for such position should be that the system in place is fair, both from an internal domestic perspective, as from a more European cross-border perspective, with as clarification that a supportive tax approach regarding professional football does not create unfairness.

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

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The above illustrates that the football sector has its specific characteristics, distinguishing that sector from other sectors: professional football players' careers are much shorter and subject to perils such as injuries; the sector, through its corporate social responsibility initiatives, but also intrinsically because of its popularity amongst EU citizens and beyond, has significant societal relevance; the football economy is continuously growing etc. From a regulatory and policy perspective, these elements carry certain weight. This does not in itself mean that the football sector is of greater significance or necessarily carries more weight than other sectors. From a societal perspective, it is self-evident that professional football players are not more important than nurses, bank clerks, cashiers, hair dressers, etc. Yet on the other hand, it is incontestable that playing professional football is a different profession from others. As a matter of fact a professional football player: possesses sporting skills others do not possess (nor can develop), can exercise those skills only during a short period of time while others are normally not subject to such (physical) limitations regarding the length of their career, are to a larger extent than other sectors dependent on physical fitness (no injuries) throughout their career. Moreover, the football sector, through its popularity amongst citizens of the Unions and beyond, generates more attention than most sectors and, consequently, on average, has a larger impact.[71] These are not decisions in favour of the football sector, nor against others sector, but mere observations.
Policy makers can do with them as they see fit. It is not the intention of the authors to take any stance in this respect; the sole intention of the authors is to fuel the debate with objective and academic analyses, contributing to further awareness and nuance. The authors' opinion is that such contribution is indispensable, given that academia is largely absent in the debate up until today. In the remainder of this study, we will focus on taxation of players' remuneration from a European, cross-border mobility 'level playing fields' perspective, not to minimise all contemplations, yet to increase feasibility of this first exploratory study and, of course, also to be able to formulate policy recommendations to the European Parliament, which obviously requires a more cross-border focus.[72] The German and Italian example will be examined.

3. The German example: rules applicable to resident sportsperson and entertainers.
Germany ranked 11th out of 37 OECD countries in terms of the tax-to-GDP ratio in 2019. In 2019, Germany had a tax-to- GDP ratio of 38.8% compared with the OECD

[71] EU-COM, *Taxing professional football in the EU. A comparative and EU analysis of a sector with tax gaps*, , European Parliament, Luxembourg, 2021, p. 21 ff.
[72] EU-COM, *Taxing professional football in the EU. A comparative and EU analysis of a sector with tax gaps*, , European Parliament, Luxembourg, 2021, p. 21 ff.

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average of 33.8%.[73] Entertainers and sportspersons who are resident in Germany are liable to German income tax on their worldwide income.

There is no special migration regime conceived from which entertainers and sportspersons moving from abroad could benefit. German fiscal law doesn´t forecast an income category specifically for taxing resident entertainers and sportspersons. Income is to be assigned to the regular categories (in particular, income from employment, income from self-employment and business income). When pursuing to categorize the income of entertainers and sportspersons in accordance with German law, a variety of income categories may therefore be relevant. All taxation presupposes, however, that the income-generating activity is not being followed only as a hobby without any profit motive. Even in the case of a performance for which only actual expenses are reimbursed, the BFH (Federal Fiscal Court) dismisses the profit motive. The margins between the income categories are governed by general criteria. Income from employment on the one hand and income from self-employment and business income on the other are substitutions: a business activity depends on the existence of self-employment with a profit motive, whereas the classification as an employee presupposes a dependent working relationship (integration in the business, bound by directions, no entrepreneurial risk). Income from self-employment pursuant to section 18 of the EStG (Income Tax Act) differs from business income as far as it calls for a particular type of activity. Entertainment (an activity of an entertainment nature) depends on the subsistence of an original creative performance. Reproducible activities (typically of singers, organists, etc.) fall under this heading as well. The drawing of boundaries is a complex matter the resolution of which has evolved over time by a careful distinction of cases.

In the case of income relating to an appearance, the point of departure is the question as to whether the entertainer or sportsperson derives income from employment, self-employment or business activities.[74] For sportspersons, income generally arises only from employment or business activities. Sportspersons who are team members (as in football, handball, hockey, basketball, etc.) generally receive income from employment.[75] Sportspersons whose sport calls for an individual performance (golf, wrestling, boxing, tennis, etc.), in contrast, are not employed.[76] Professional sportspersons who are not employed generally receive business income and not income from self-employment because their activities do not correspond to

[73] See https://www.oecd.org/tax/revenue-statistics-germany.pdf.

[74] C. Schlotter, Chapter 18: Germany in Taxation of Entertainers and Sportspersons Performing Abroad (G. Maisto (ed.), IBFD 2016), *Online Books IBFD* (accessed8 26 August 2016); Re the criteria governing the boundaries, cf. DE: *Bundesfinanzhof* (BFH), 22 Feb. 2012, X R 14/10, Federal Tax Gazette II 2012, 511; Becker & Figura, BB (Betriebs-Berater), 2012, 3046 ff.

[75] Becker & Figura, id., at 3047; re amateurs, cf. DE: BFH, 23 Oct. 1992, VI R 59/91, Federal Tax Gazette II 1993, 303.

[76] Steiner, *Steuerrecht im Sport, 2009*, m.no. 312; Becker & Figura, id., at 3048.

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the self- employment categories described in section 18 of the EStG. The treatment for tax purposes of racing cyclists, especially when they race as members of a team, is a matter of dispute.

In the case of amateur sportspersons as well, the existence of employee status is to be examined according to all the circumstances of the individual case. If a member of a sports team receives payment from an association for appearing in the national team, the question arises as to whether the payment constitutes remuneration by a third party or arises from a second employment. When drawing the boundary, the relevant issues include the nature of the release obligation according to the association's statutes and whether the provisions of the employment contract with the club regulate the player's duty to take part in national team events.[77] Similar boundary issues arise in the case of appearance-related income of entertainers. If employed, entertainers derive income from employment. If acting in a freelance capacity and with the requisite originality, on the other hand, entertainers derive income from self- employment pursuant to section 18 of the EStG. The BMF (Federal Ministry of Finance) has summarized criteria governing the boundaries between self-employment and employment in the case of entertainers and related professions in an "entertainer decree" (*Künstlererlass*).[78]

The overall circumstances of the individual case serve as the decisive factor. Adopting a stereotypical perspective, the fiscal authorities thus take the view that actors, singers, dancers and other entertainers who are engaged as guests in a performance are integrated in the theatre and therefore not self-employed if they accept a part in a production and at the same time undertake to rehearse in order to learn the role or familiarize themselves with the artistic concept.[79] Blocking and explanatory rehearsals alone do not give rise to employed status. Court rulings reflect a sceptical view of the special emphasis afforded the undertaking to take part in rehearsals.[80] A distinction is made for income from advertising. For resident entertainers and sportspersons, advertising income is classified as business income.

This applies to both income from the granting of permission to use personality rights and active promotional appearances for advertising clients (e.g. at trade fairs). In the case of employed sportspersons who, while performing, engage in advertising activities within the framework of an agreement with a kit supplier, the question arises as to whether the income is to be treated as remuneration by a third party or as business income. It is now acknowledged that an employed member of a sports team

[77] Cf. DE: BFH, 22 Feb. 2012, X R 14/10, Federal Tax Gazette II 2012, 511; DE: FG (Fiscal Court) of Münster, 25 Mar. 2015, EFG 2015, 989.

[78] BMF, 5 Oct. 1990, Federal Tax Gazette I 1990, 638.

[79] R. Houben, A. Van de Vijver, N. Appermont and G. Verachtert, *Taxing professional football in the EU. A comparative and EU analysis of a sector with tax gaps*, , European Parliament, Luxembourg, 2021, p. 21 ff.

[80] DE: BFH, 30 May 1996, Federal Tax Gazette II 1996, 493.

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can also, in certain circumstances, by performing advertising services in the context of the sporting activity undertaken for his club in an employed capacity, pursue a business (side-line) activity (e.g. advertising for third parties within the framework of agreements with kit suppliers) because the sportsperson is thus taking entrepreneurial initiative and accepting entrepreneurial risk.[81] A separation of advertising on behalf of the employer on the one hand and the wage or salary on the other has thus far been recognized only within strict limits if the member of a sports team has a high personal advertising value.[82] A fairly recent ruling of the BFH [83] has cast doubt on this narrow view, which could give rise to the concept of business income from advertising being extended to encompass the employer as well.[84]

3.1 Elimination of double taxation regarding resident sportspersons and entertainers working abroad.

If resident entertainers and sportspersons derive income from appearances abroad, the income generated by activities performed abroad is subject to German income tax by application of the worldwide income principle.

German double taxation treaties (DTTs) generally envisage an entitlement of the other contracting state to tax income derived from activities exercised in that other state in compliance with article 17 of the OECD Model (*see* below for particularities and boundary issues relating to other articles of the Convention). Depending on the provisions governing methods for elimination of double taxation contained in the individual treaty, Germany can exempt income from tax or allow as a deduction from the tax payable on income an amount equal to the income tax paid in the other state. In connection with exemption, subject-to-tax clauses are contained in section 50d(8) of the EStG for employees who, for tax purposes and the assessment of taxes on worldwide income, are resident in Germany. Exemption is granted in such cases only if the employee demonstrates that the state having fiscal jurisdiction according to the DTT has waived its right to tax or that the taxes assessed in that state have been paid. In the absence of a double taxation treaty, the general regime for double taxation relief pursuant to sections 34c and 34d of the EStG applies.

It is relevant in this connection that German income tax law, for tax relief purposes, categorizes only certain types of income as "foreign income" within the meaning of section 34d. Employees can consequently, pursuant to section 34c(1) of the EStG deduct from the German tax on income arising from foreign income an amount equal

[81] DE: BFH, 22 Feb. 2012, X R 14/10, Federal Tax Gazette II 2012, 511; BMF, 25 Aug. 1995, ESt-Kartei ND Art. 19 no. 2.4.

[82] DE: BGH, 7 Oct. 2006, 5 StR 164/06, HFR (Supreme Fiscal Court ruling) 2007, 597; DE; FG Münster, 16 Apr. 2010, 14 K 116/06 G, EFG (Fiscal Court ruling) 2010, 1426.

[83] DE: BFH, 22 Feb. 2012, X R 14/10, Federal Tax Gazette II 2012, 511; Becker & Figura, supra n. 339.

[84] Becker & Figura, id., at 3051 ff.

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to the corresponding foreign taxes paid. Instead of this approach, section 34c(2) allows the option of deducting the foreign tax when the income is being determined (deduction method). Persons carrying on a business can apply only the deduction method pursuant to section 34c(3) of the EStG and, when determining the income, deduct the foreign tax assessed and paid for the income, less relief. If a resident entertainer or sportsperson receives overall remuneration for appearances in different states, the question of apportionment generally gives rise to uncertainty. The remuneration has to be apportioned, but there is no actual benchmark. Instead, the remuneration is to be apportioned according to the circumstances of the individual case.[85] The apportionment is to be based on reasonable economic criteria.[86] Opinions on this issue differ. There is a view that an overall fee for a European tour can be apportioned according to the number of concerts performed in the individual countries.[87]

In the case of sportspersons as well, it is assumed that a portion of the remuneration can be objectively allocated to the state of residence by apportioning the whole amount according to the number of domestic and foreign events.[88] In particular, in the case of employed entertainers and sportspersons, the allocation is to be made on the basis of the working days spent in each state.[89] For reasons of simplicity each working day is to count as a full working day, irrespective of the duration of the relevant activity indicated in article 17 (e.g. including that of a professional footballer who plays only for a short time). Another view insists that consideration must also be given to the significance and scope of an actual event (e.g. in the case of racing drivers and tennis players, greater weight would be attached to a 24-hour race and a Grand Slam tournament respectively).[90] In the case of tours undertaken by entertainers, similar proposals have been tabled for the allocation to be made according to the number of tickets sold or the relative sizes of the visited countries' populations.[91]

3.2 The tax framework for football players.

German tax resident individuals are liable to income tax on their worldwide income and assets. An individual is considered resident in Germany if his domicile or habitual place of abode is in Germany. According to section 8 of the General Tax

[85] Wassermeyer & Schwenke, in Debatin & Wassermeyer eds., DBA, Art. 17 m.no. 36c.
[86] Op.cit.
[87] Maßbaum, in Gosch, Kroppen & Grotherr eds., DBA, Art. 17 OECD MA m.no. 107.
[88] DE: BFH, 6 June 2012, I R 3/11, Federal Tax Gazette II 2013, 430.
[89] DE: FG Münster, 3 Feb. 2006, 2 K 4000/03 E, EFG 2006, 1177.
[90] Maßbaum, in Gosch, Kroppen & Grotherr eds., *DBA*, Art. 17 OECD MA m.no. 107.
[91] DE: FG Hamburg, 17 Jan. 1997, II 97/96, EFG 1997, 621; cf. also Hahn-Joecks, *Zur Problematik der Besteuerung ausländischer Künstler und Sportler*, p. 106 ff.

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

An individual's habitual place of abode is the place where he is present in circumstances which indicate that his stay is not just temporary. A habitual place of abode is deemed to exist if an individual has been continuously present in Germany for a period of more than 6 months (section 9 of the AO). A short interruption during the stay is not taken into account, i.e. it is included in the calculation of the 6-month period. A presence of less than 6 months may also create a habitual place of abode if the presence is not temporary. If the taxpayer's presence in Germany is exclusively for a visit, recuperation, cure or similar private purpose, a habitual place of abode is deemed to exist if the stay exceeds 1 year. Individual income tax is imposed at the following progressive rates (section 32a of the EStG, hereafter the tax table for individual taxpayers for 2021). A 5.5% solidarity surcharge is levied on the amount of tax computed according to the above tables. The solidarity surcharge of 5.5% is levied on the income tax due (section 1 of the SolzG). Football players will usually be subject to the highest tax rate. In German tax law, income from capital investments and other types of income (such as gains arising from private transactions) are distinguished from income from employment. All income from private capital investments are subject to a final flat withholding tax of 25%, increased to 26,375% by the solidarity surcharge. German tax law provides a tax free amount of 801 EUR per taxpayer per year. Capital gains arriving from private transactions are normally not subject to tax. However, certain exceptions do apply concerning capitals gains from immovable property and capital gains which are deemed to be speculative in the case of moveable property. Entertainers and sportspersons who are resident in Germany are liable to German income tax on their worldwide income. There is no special migration regime from which entertainers and sportspersons moving from abroad could benefit. German tax law does not envisage an income category specifically for taxing resident entertainers and sportspersons.

Income is to be assigned to the regular categories (in particular, income from employment, income from self-employment and business income).[92] Germany does not have another special regime in place covering inward expatriates. In 2020, German football officials were in the eye of the storm when German prosecutors and tax authorities searched offices of the German Football Association (DFB) as well as private homes of current and former officials on suspicion of tax evasion on behalf of the DFB .[93] Six officials of the DFB were suspected of having intentionally falsely declared income from advertising in soccer stadiums during home games of the

[92] C. SCHLOTTER, Chapter 18: Germany in Taxation of Entertainers and Sportspersons Performing Abroad (G. MAISTO (ed.), IBFD 2016), Online Books IBFD (accessed8 26 August 2016).

[93] See https://www.reuters.com/article/uk-soccer-germany-taxevasion-idUKKBN26S172.

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national team in 2014 and 2015 as income from asset management instead of income from advertising, leading to 4.7 million euros ($5.5 million) in unpaid taxes, as the DFB does not pay taxes on income from asset management, but is obliged to do so for income stemming from professional activities.

4 Italy´s tax framework for football player.

Relative to the OECD average, the tax structure in Italy is characterised by higher revenues from taxes on personal income, profits and gains as well as social security contributions.[94] Italy ranks 3th in the UEFA association club coefficient ranking 2020/21. For purposes of this study, Italy is presumed to horde a top competition. Italian income tax applies to both resident as non-resident individuals. Resident individuals are in principle taxed on their worldwide income, and a credit is provided for taxes paid abroad.

Non- residents are taxed only on income that is deemed to be arising in Italy (article 3(1) of the Testo Unico delle Imposte sui Redditi, hereafter TUIR). Individuals will typically be subject to the Italian imposta sul reddito delle persone fisiche (IRPEF),which is a progressive tax that applies to the aggregate total income of the taxpayer. Some individuals are subject to the regional production tax, or so-called Imposta Regionale sulle Attività Produttive (IRAP), which is different from IRPEF in the sense that it is a tax levied at a flat rate on the adjusted income from professional and business activities.[95]Favourable specific rules may apply to qualifying high net worth individuals (hereafter referred to as the Italian resident non-dom regime[96]), inward expatriates and individuals earning foreign pension income who become new residents in Italy. Almost 20 years have passed since Italy introduced a rebuttable legal presumption of tax residence for Italian nationals fictitiously transferring their fiscal residence to jurisdictions where the tax burden is low or non-existent.[97] This constituted the most visible response to a series of cases involving prominent high-net-worth individuals (HNWIs) artificially transferring their

[94] See https://www.oecd.org/tax/revenue-statistics-ita ly.pdf.

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

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

[97] IT: Income Tax Consolidation Act (ITCA) (Decreto del Presidente della Repubblica (Presidential Decree, DPR) 917 of 22 Dec. 1986), art. 2(2- bis), National Legislation IBFD, which states that "until proved other- wise, Italian citizens, who are deleted from the resident population's General Registers and are emigrated in States or territories other than the ones singled out by the decree of the Ministry of Finance to be pub- lished on the Official Bulletin, are considered ... as resident". All trans- lations from Italian into English are the author's unofficial translations. The blacklisted states are listed in IT: Decreto Ministeriale (Ministerial Decree, DM) of 4 May 1999.

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residence to neighbouring city states, such as Monaco or San Marino, to avoid the high rates of Italian income tax.[98] In a sense, the enactment of deemed residence rules[99] represented the ultimate attempt by Italy to enforce its world- wide taxation system, which had been in place from the 1970s.[100] Historically, residents in Italy have been taxed on their worldwide income at progressive rates,[101] with a foreign tax credit to eliminate any double taxation on foreign-source income. Conversely, non-residents are liable to tax only on their Italian-source income.[102]

However, the special regimes recently approved indicate that the Italian lawmaker has quite considerably modified the previous policy by becoming more lenient when it comes to taxing Italian residents.[103] Consequently, Italy has joined the increasing number of European states that have recently introduced favourable regimes into their domes- tic tax systems that are intended to encourage foreign individuals to move to and invest in their countries.[104] This trend merely reflects, in tax matters, the increasing propensity of workers, especially highly skilled individuals, to move to Europe.[105] Such a situation is driven by tax competition[106] between European states in

[98] See the decision of the Tax Court of First Instance of Modena (TCFIM) in IT: TCFIM, 9 Feb. 1999, Case 985, Tax Treaty Case law IBFD. For comment on this case, see C. Rotondaro, The Pavarotti Case; Decisions of the Tax Court of First Instance of Modena of 9 February 1999 and the Tax Court of Second Instance of Bologna of 27 March 2000, 40 Eur. Taxn. 8 (2000), Journals IBFD.

[99] A deemed residence provision specifically targeting foreign-dressed companies was introduced by arts. 73(5-bis) and 73(5-ter) of the ITCA in 2006.

[100] IT: DPR 597 and IT: DPR 598 of 29 Sept. 1973. For an overview of the concept of residence for individuals under Italian tax law, see G. Marino, La residenza nel diritto tributario (CEDAM 1999); G. Melis, Trasferi- mento della residenza fiscale ed imposizione sui redditi (Giuffre Editore 2009); and S. Dorigo, Chapter 16 – Italy, in Residence of Individuals under Tax Treaties and EC Law (G. Maisto ed., IBFD 2010), Online Books IBFD.

[101] Flat rates of tax only apply to defined passive income.

[102] Art. 3(1) ITCA. Italian-source income is defined in art. 23 of the ITCA. However, under art. 24(3-bis) of the ITCA, which was introduced in 2014, non-resident individuals earning more than 75% of their income from Italian sources are taxed as Italian residents, provided that they are residents of states that ensure adequate exchange of information.

[103] The same policy turn can also be seen in respect of corporate taxa- tion. Notably, IT: Decreto legislativo (Legislative Decree, DLgs) 147 of 14 Sept. 2015 ("Internationalization Decree") art. 14, National Legis- lation IBFD introduced new art. 168-ter into the ITCA, which offers the optional exemption for profits and losses of foreign branches, i.e. a "branch exemption". In addition, art. 8 of DLgs 147 repealed art. 168 of the ITCA, which contained controlled foreign company (CFC) rules regarding affiliated companies, i.e. companies not controlled by a resi-dent person, but in the profits of which a resident person, directly or indirectly, had an interest of at least 20%, reduced to 10% for listed com- panies.

[104] Special regimes for expatriates, both inward and outward, and for HNWIs are provided for in the tax laws of Austria, Belgium, Denmark, Finland, France, Ireland, Luxembourg, Malta, the Netherlands, Portu- gal, Spain, Sweden, Switzerland and the United Kingdom. In addition, most of the tax systems of Central and East European countries are per se attractive to individuals, as they generally offer both residents and non-residents a flat-rate tax regime at moderate rates.

[105] Recent data indicates that EU workers residing in another EU Member State have increased from 4.7 million in 2005 to 8 million in 2013. See L. Andor, Labour Mobility in the European Union - The Inconvenient Truth (European Commission 2014), available at http://europa.eu/rapid/ press-release_SPEECH-14-115_en.htm. The increasing mobility of individuals inside the European Union has lead to some distinguished scholars arguing in favour of the cross-border fractional allocation of income in each Member State. See K. van Raad, Fractional

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trying to attract qualified foreign individuals and to promote domestic invest- ment. This in turn suggests that, ultimately, labour can currently be as mobile as capital.[107]Given this framework, this article intends to provide an overview of the Italian special regimes for certain cate- gories of resident taxpayers and briefly compares these regimes with analogous regimes in other selected Euro- pean countries. Special attention is devoted to recently enacted regimes for highly skilled inward expatriates and for HNWIs taking up tax residence in Italy. Such regimes are complemented by other provisions that are narrower in scope and benefit other selected highly skilled workers and academics.

4.1 The New regime for Inward Expatriates.

A special regime for highly skilled inward expatriates was introduced by article 16 of *Decreto legislativo* (Legislative Decree, DLgs) 147 of 14 September 2015 ("Internationalization Decree"), which contains new measures that are intended to promote the growth and internationalization of Italian enterprises. By opting for this special regime, individuals who transfer their tax residence to Italy are entitled to a partial exemption of Italian-source employ- ment income from income tax. The exempted portion of the employment income, initially 30% of the gross salary, has recently been increased to 50% by *Legge* (Law) 232 of 11 December 2016 (the "Stability Law of 2017") With regard to the personal scope, the regime is limited to individuals who hold "a management role" or meet "high qualification or specialization requirements".

These requirements have been further detailed by Decreto Ministeriale (Ministerial Decree, DM) of 26 May 2016 issued by the Ministry of Economy and Finance,[108] which referred to the labour law categories set out in the DLgs 206 of 6 November 200714 and 108 of 28 June 2012.15 In addition, in order to qualify for this special regime, the transfer- ring individual cannot have been a resident in Italy for the five years preceding the transfer.

The individual is also required to reside in Italy for a minimum of two years. If this condition is not fulfilled, the benefits are clawed back and the employment income is

Taxation of Multi-State Income of EU Resident Individuals – A Proposal, in Liber Amicorum Sven-Olof Lodin p. 211 et seq. (K. Andersson, P. Melz & C. Silfverberg eds., Wolters Kluwer 2001); M. Mössner, Source versus Resi- dence - An EU Perspective, 60 Bull. Intl. Taxn. 12 (2006), Journals IBFD; and P.J. Wattel, Progressive Taxation of Non-Residents and Intra-EC Allo- cation of Personal Tax Allowances: Why Schumacker, Asscher, Gilly and Gschwind Do Not Suffice, 40 Eur. Taxn. 6, sec. 5 (2000), Journals IBFD. For a recent analysis of the possible solutions to tax obstacles caused by different concepts of tax residence among member states, see F. Pitrone, Tax Residence of Individuals within the European Union: Finding New Solutions to Old Problems, 8 World Tax J. (2016), Journals IBFD.

[106] V. Tanzi, Equity, Transparency, Cooperation and the Taxation of High Net Worth Individuals, 18 Asia-Pac. Tax Bull. 4 (2012), Journals IBFD.

[107] R.S. Avi-Yonah, Advanced Introduction to International Tax Law ch. 10 (Edward Elgar Publ. 2015).

[108] IT: DM of 26 May 2016.

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taxed under ordinary rules. In this event, the individual's tax liability is also increased by interest and penalties. With regard to the material scope of the regime, the exemption is limited to income from employment. In this respect, the working activity must be performed for an enterprise resident in Italy, following the conclusion of an employment contract with the same enterprise or a related company. Neither the text of article 16 of DLgs 147 nor the DM of 26 May 2016 specifically refers to the pos- sibility that the employment contract is concluded with a permanent establishment (PE) of a foreign enterprise. However, there appears to be little or no reason to exclude the application of the regime in such circumstances. The regime also requires the working activity to be mainly performed in Italy. However, the criterion for determining this is not defined. In the absence of a clear rule, it appears to be correct to refer to the physical presence of a worker within Italy. Nevertheless, it should be noted that a different solution has been implemented in France, where such a situation is determined in respect of the overall salary of the expatriate. In addition, even where such a requirement is determined, it may be doubted whether all of the employment income could benefit from the exemption or only that portion attributable to the working activity performed in Italy.

Both the Italian resident non-dom regime and the inward expatriates' regime are said to highly influence the tax attractiveness of Italy for football players and sportspersons in general. Individuals resident in Italy are subject to IRPEF on their aggregate worldwide income. Residents of Italy are those persons, whether nationals or not, who for the greater part of the tax year are registered in the Civil Registry of the Resident Population or who are resident or domiciled in Italy pursuant to article 43 of the Civil Code (Codice Civile, C.C.)89.[109] The Civil Registry of the Resident Population criterion relies on a formal condition, i.e. registration in this register for at least 183 days in a given tax period. Under article 43 of the C.C., the residence of a person is the place where he has his habitual abode, while his domicile is the place where he has established the principal centre of his business and interests (centre of vital interests). Italy has specific rules in place for taxpayers (Italian nationals) who have removed themselves from the Civil Registry of the Resident Population, with a view on moving to blacklisted jurisdictions. With ruling no. 29095 of October 2020 [110],the Court of Cassation declared an appeal filed by the football player Mirko Vučinić inadmissible. This appeal dealt with a tax residency case. The Court denied the player the loss of his tax residence in Italy despite being registered for a Middle Eastern team.

The judges analysed the case and found substantial factors that linked the player to the Italian territory notwithstanding his transfer (payment of contributions for

[109] See www.ibfd.org.

[110] See https://www.giurisprudenzapenale.com/wp-content/uploads/2020/11/Cass-29095-2 0.pdf.

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domestic workers, children attending schools, current financial relationships, ownership of cars and motorcycles, ownership of real estate and utilities in Italy, real estate contracts, etc.).As a result of this judgment, Vučinić, although registered with and playing for a foreign club, was considered to have remained a taxpayer fiscally resident in Italy. This conclusion seems logical in the light of Italy attaching importance to the criterion of the centre of central interests. IRPEF is levied on personal income, whether in money or in kind, falling under any of the following categories (articles 1 and 6 of the TUIR): income from land and buildings (*redditi fondiari*); income from investment (*redditi di capitale*); income from employment (*redditi di lavoro dipendente*)[111]; income from self-employment (*redditi di lavoro autonomo*); business income (*redditi di impresa*); and miscellaneous income, including capital gains (*redditi diversi*). The above list is exhaustive, which means that if an item of income is not expressly mentioned in one of the chapters, it is not subject to IRPEF. The following progressive individual income tax rates have been applicable since 2007 (article 11 of the TUIR): Certain items of income can be subject to separate taxation, i.e. they can be excluded from the aggregate income and taxed separately at a particular tax rate.

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

Italy has nevertheless seen important tax variations which influence the tax treatment of football players and permits for a separate tax regime. Qualifying professional sports persons, comprising football players, who transfer their tax residence to Italy can certainly benefit from a favourable tax regime. One the other side, Italy introduced a tax regime for high-net-worth individuals (here after referred to as the Italian resident non-dom regime) and otherwise a more generally applicable tax regime for inward expatriates (hereafter referred to as the Italian expatriates tax regime).

4.2 The Italian resident non-dom regime.

Nowadays, in order to sum up, the Italian tax system recently received quite a lot of attention. This can be traced back on Portuguese football star Cristiano Ronaldo's

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

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transfer to Juventus in 2018. Cristiano Ronaldo took a decision to leave Spain and moved to Italy amid (unconfirmed) conjecture that Spanish tax penalties could play a relevant role in this regard. Ronaldo was found to be using offshore entities to administer earnings from image rights and was fined for tax evasion in Spain.[112] Just before Ronaldo's move to Italy, Italy introduced a new law intended to encourage individuals to move to Italy[113] entailing a resident non-domicile tax regime (known as 'regime dei neo- residenti'). The regime is accessible to taxpayers of any nationality who transfer their residence to Italy from abroad and who have been resident abroad for at least nine tax periods in the ten-year period preceding the acquisition of Italian residence. The regime does not necessitate a minimum number of days of presence of the taxpayer on Italian territory. Income from foreign sources is subject on a yearly basis to a fixed substitute tax of EUR 100.000 that applies in lieu of IRPEF and related surcharges (reduced to EUR 25,000 if the option is extended to the taxpayer's family members). With respect to assets held abroad, the regime also provides significant advantages, namely the exemption from IVIE and IVAFE and from the tax reporting obligations.

In the end, regarding assets, which happen to be held abroad the regime also foresees an exemption with regard of inheritance and gift tax. This measure is intended to entice high net worth individuals in general and is thus not specially steering football players. Nevertheless it has not been clearly established by the Italian Tax authorities or the football players entourage that Ronaldo underlies this specific flat tax regime. Though it can be stated at this very point, that he is often related to this specific tax regime.[114]It can be stated, that the nominal amount in concern regarding this specific flat fee is rather high though it can provide specific benefits if associated to the normally applicable taxes on income related to high- earning football players, who dispose on a relevant wealth positioned outside of the Italian state.

To efficiently apply the regime, it will remain important to analyse the different kinds of income generated by athletes.[115] Endorsement income or image rights income received in connection with the obligation to wear specific sportswear in

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

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

[114] X."Aflat-tax scheme is luring the wealthy to Italy", The economist: https://www.economist.com/europe/2020/10/29/a-flat-tax-scheme- is - lu rin g - th e - we a lth y - to- italy.

[115] A. Tavecchio, M. Caldara and R. Barone have analysed the regime in the light of typical income received by athletes, such as image r i g h t s : A . T avecchio/ M . C aldara/ R . Barone , " The Cristiano Ronaldo Transfer to Juventus: The new italian resident regime benefits Athletes from Around the World", ITSG Global Tax Journal, October 2018, pp. 11-16.

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games outside of Italy should be included in the scope of lump sum payment. It is arguable if endorsement income or image rights income not received in connection with a sport performance would instead be covered. In such cases, in the absence of guidance or clarifications issued by the Italian tax authorities, the source of the income should be determined based on the residence of the payer. The flat tax regime could even be beneficial in relation to income obtained through foreign disregarded companies.[116] The application of the regime is rather simple, in the sense that no peculiar qualifications are imposed on the taxpayer willing to apply the regime.[117] Taxpayers may access the regime by submitting an advance tax ruling to the Italian Revenue Agency or by exercising the option for substitute taxation in their tax return. It is basically sufficient that the taxpayers were consecutive Italian non-residents prior to their transfer of residence to Italy and is willing to pay the flat fee.

As a matter of fact the specific regime in question may not be associated with other foreseen Italian regimes, which enable for tax incentives, such as the expatriate tax regime, which will be highlighted in the following. The regime comprises a non-renewable maximum duration of fifteen tax periods starting to elapse from the first year of tax residency. In specific scenarios such as a case of revocation or withdrawn in advance of the termination, the taxpayer is forbidden from exercising a second option to fall in the scope of the favourable regime a second time.[118]

4.3 The Italian expatriates tax regime.

Where the Italian 'non-dom regime' mainly provides for tax incentives in relation to income received outside Italy by (new) Italian tax residents, Italy also grants incentives that favourably treat Italian- sourced income held by individuals transferring their tax residence to Italy to carry out a work activity in the country ('expat workers' or 'impatriates', hereafter generally referred to as expatriates). Italy enacted these rules in 2010 (for professors and researchers) and 2015 (for 'workers' and entrepreneurs'[119]), with a view on granting a tax exemption to these workers in the form of a reduction of their taxable base. The relevant benefits apply to individuals[120] (i) who transfer their tax residence to Italy and commit to remain in Italy for at least 2 years,(ii) who were not Italian residents in the 2 years preceding

[116] A. Tavecchio, M. Caldara, R. Barone have analysed the regime in the light of typical income received by athletes, such as image rights : A . Tavecchio, M. Caldara, R. Barone, " The Cristiano Ronaldo transfer to juventus: The New Italian Resident Regime Benefits Athletes from Around the World", *ITSG Global Tax Journal*, October 2018, p. 16.

[117] Tax incentives for attracting human capital in Italy pdf", https ://www. agenziaentrate. gov.it / portale/ documents/ 20143/233483/Tax incentives for attracting human capital in Italy.

[118] R. Houben, A. Van de Vijver, N. Appermont and G. Verachtert, *Taxing professional football in the EU. A comparative and EU analysis of a sector with tax gaps*, , European Parliament, Luxembourg, 2021, p. 42 ff.

[119] Article 16 of Legislative Decree No. 147 of 14 September 2015.

[120] See www.ibfd.org.

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the transfer and (iii) who are mainly working in the Italian territory. A 70%[121] exemption applies to their employment, self-employment or business income (provided that relevant business income is derived from newly established enterprises carried on in Italy). The regime can be extended for a further five tax periods if one of the following alternative conditions is met, i.e., the employee has a minor or dependent child, including a pre-adoptive foster child; or the employee has become the owner of at least one residential property in Italy (including in the 12 months preceding the transfer). The regime was slightly modified in 2019 by Law Decree No. 34 of April 30, 2019 (entry into force on May 1, 2019, applicable to taxpayers transferring their tax residence to Italy starting from 2020). According to the abovementioned Law Decree employees and self–employed professionals could qualify for the expat tax regime, regardless of their qualifications (i.e. no specific scholar degree, masters, or similar are required) or role. The decree established that professional athletes[122] can qualify as expatriate under the regime to the extent that they qualify under the general conditions (higher described engagement to remain tax resident of Italy for 2 years and mainly performing activities in Italy). If so, the athletes will enjoy a 50% reduction instead of 70% reduction on their taxable income.[123]

The regime applies for five tax periods with no possibility of extension. Athletes will however be required to pay a proportional levy equal to 0,5% of the taxable income if they want to apply this regime. The proceeds of this tax will be used to provide support to younger athletes in the sports sector. Non or insufficient payment of the contribution within the deadline will result in forfeiture of the benefits of the 'inbound employees' regime. The benefits of the expatriate income tax regime are withdrawn in case the taxpayer does not maintain his/her residence in Italy for at least two tax periods. The taxpayer may submit to his/her employer (or principal) a declaration in which, inter alia, he declares to meet the requirements for the benefits of the relief, in order to benefit from the benefits provided for by the expatriate income tax regime. The employer (or the principal), acting as withholding agent, shall withhold the taxes on the reduced taxable base. The benefit can also be taken at the end-of-year adjustment or in the tax return.

Political parties have criticised that the Italian expatriate income regime might be in breach of EU-law and more specifically, the prohibition on illegal fiscal State aid. The

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

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

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

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European Commissioner for Competition, Ms. Vestager, replied to these concerns by stating that the Commission did not receive advance notifications of the Italian decree Decreto Crescita. Pursuant to Article 108, paragraph 3, of the Treaty on the Functioning of the European Union, it is the responsibility of the Member States to notify measures they consider may entail State aid. However, based on available public information, the expatriate income tax regime appears to: concern personal income tax, not corporate income tax; seems to apply to all inward expatriates working in any sector; and to set a stricter limit to the exemption for persons employed in professional sports (50% of income) compared to other inward expatriates (70%). Based on this limited information, the measure does not seem to raise State aid issues, according to the Commissioner.[124]

4.4 Recent events.

Prior to 1 January 2016, article 51(4-bis)[125] of the Italian Income Tax Code (ITC) has enacted a special marginal benefit for professional sportspersons (with effect as from 1 January 2013), which should have been applicable mainly to professional soccer players.[126] In accordance to this provision, the sportsperson was subject to tax upon a portion of the agent's fee which is paid by the club that acquires the sporting performances of the athlete. The deemed income was computed in the amount of 15% of the agent's fee net of the fees that the sportsperson paid to his own agent (if any). The design of this rule raised doubts as to whether the provision violated the ability-to-pay principle set out in article 53 of the Italian Constitution. Amongst others for this reason, the provision has been recently eliminated by article 1(8) of Law 208 of 28 December 2015 (Budget Law 2016) with effect as from 1 January 2016.

The Italian Revenue Agency recently issued Ruling No. 139/2021, which clarifies the tax treatment of payments made by an Italian resident movie production company to a Spanish tax resident movie actress as remuneration for the alienation of the exclusive right to exploit worldwide the image rights connected to the role of interpreter and executor of a movie. The movie will be entirely produced in Italy. Under the agreement, the actress's remuneration has been divided in several components: 60% for the professional artistic performance as main actress of the Movie and 40% for the alienation of the image rights. The Italian resident company entreated the Italian Revenue Agency to confirm whether the consideration for the

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

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

[126] M. Tenore, "Chapter 19: Italy in Taxation of Entertainers and Sportspersons Performing Abroad", in G. Maisto (ed.), IBFD 2016, Online Books IBFD (accessed 26 1 August 2016), available on www.ibfd.org.

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alienation of the Image Rights fell into the definition of royalties under Article 12(2)(a) of the 1977 Italy-Spain tax treaty.

In this case, the Italian Revenue Agency characterised the remuneration for the alienation of the image rights as income from self-employment under Italian domestic tax law since the image rights belong to an individual performing as professional actress on a habitual basis (see also Ruling No. 255/2009). Because of these reasons, based on the ground that the entire performance will take place in Italy, the whole actress's remuneration is sourced in Italy. Albeit not entirely comparable with a domestic case, this ruling might also have an impact for football players benefiting either from the Italian resident non-dom regime or the expatriates income tax regime. Seeing that non-Italian sourced income is generally not apportioned with separately in the Italian resident non-dom regime, a big focus in practice will lie on the correct assessment of income. If the Italian tax authorities would growth the scope of income deemed to be of Italian source, this would diminish the benefits of the Italian non-dom regime.

5. Conclusions.

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

Therefore, the fiscal situation of professional football players has to be assessed on an individual basis, taking into account their (previous) tax residency, height of their salary, composition of their remuneration package, the availability of other types of income, whether they receive foreign sourced income or not, etc.[127] At the same time, the research shows that players will, in the default situation, usually be subject to

[127] R. Houben, A. Van de Vijver, N. Appermont and G. Verachtert, *Taxing professional football in the EU. A comparative and EU analysis of a sector with tax gaps*, , European Parliament, Luxembourg, 2021, p. 42 ff.

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'normal' levels of taxation, when compared to other, similarly paid professionals in that Member State. They do not specifically benefit from tax incentives in comparison with other taxpayers. In those Member States where football players do benefit from tax incentives, it should be mentioned that other taxpayers (often skilled expatriates or industries such as the R&D-sector or wider sports industry) also have access to tax stimuli. Ultimately, it seems that most (high earning) players, are always subject to the highest income tax rates. Countries do take a different approach in determining taxable base, for instance it seems that The Netherlands, France and (mainly) Italy offer greater possibilities to optimise taxable base in the benefit of the player. Most Member States in recent years face similar issues, linked to amongst other the taxation of image rights income or the benefit resulting from clubs paying for agent fees (whereas the services of the agent are deemed to be rendered for the individual benefit of a player). There is currently no harmonised approach for these issues. Some Member States introduce specific measures, like Italy where a specific benefit in kind has been introduced (and abolished) for agent fees. Similar discussions are pending in amongst others Belgium. The same goes for image right income, where Spain has historically tried to apply a 85/15 rule, but recently nonetheless saw intensive action by the tax authorities in relation to companies of players who claimed to be applying this rule correctly. Albeit national divergent views can arise, one could consider the possibility of creating a level playing field by applying similar criteria within the EU for the taxation of image rights income or the taxation of the benefit that results from clubs paying for agent fees.

At the same time, it seems like most Member States are trying to address tax excesses that result from abusive use of tax planning in relation to these topics. Spain, as said, has quite intensively addressed the image rights income topic over the past few years, which seemingly has led to a change in tax mentality of tax players and their advisors as well. Even with harmonised legislation, one can imagine that taxpayers continue to be creative in applying the rules. As a policy recommendation, one can then further review and enhance control measures to avoid tax excesses, in a cross-border context. Specifically for the two items mentioned above (image right income and agent fees), one could look into reinforcing of reporting obligations, for instance the one already enshrined in the currently existing measures for exchange of information in tax matters in the EU (Directive 2011/16/EU).[128] This Directive on administrative cooperation in the field of taxation already allows for exchange of information in relation to labour income in general.

The scope of the Directive has been expanded at several occasions in the past few years, with changes designed for the cryptocurrency industry now pending in an

[128] Council Directive 2011/16/EU of 15 February 2011 on administrative cooperation in the field of taxation and repealing Directive 77/799/EEC

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eighth version of the Directive.[129] Inception Impact Assessments aim to inform citizens and stakeholders about the Commission's plans to allow them to provide feedback on the intended initiative and to participate effectively in future consultation activities. Citizens and stakeholders are invited to provide views on the Commission's understanding of the problem and possible solutions and to make available any relevant information that they may have, including on possible impacts of the different options. Having an economy that works for people, while making Europe greener and more digital, are clear political priorities for this Commission. In terms of Union tax policy, this notably translates into fair taxation where everybody pays their fair share, as stressed by President von der Leyen in the political guidelines for the European Commission and communicated by the Action Plan for Fair and Simple Taxation Supporting the Recovery Strategy in July 2020. The von der Leyen Commission is committed to step up the fight against tax fraud and tax evasion. It is more important than ever for Member States and the EU to have secure tax revenues. To achieve this, fair, efficient and sustainable taxation is key. On 15 July 2020, the European Commission adopted a new tax package, the Action Plan for Fair and Simple Taxation Supporting the Recovery Strategy, which reinforces the fight against tax abuse, helps tax administrations keep pace with a constantly evolving economy and eases administrative burden for citizens and companies.
This proposal is part of the action plan and aims at improving cooperation between national tax authorities in newly developing areas as well as on existing matters. This initiative should provide tax administrations with information to identify taxpayers who are active in new means of exchange, notably crypto-assets and e- money. It will also ensure consistency with ongoing work at EU level, such as the Digital Finance Strategy adopted on 24 September 2020 and the proposal for a Regulation on Markets in Crypto-assets[130], and at international level on the taxation on crypto-assets and e-money. In addition, it will include concrete improvements and updates to keep the framework in line with national and international developments. The main problems that the initiative aims to tackle are twofold: (i) the lack of information at the level of national tax administrations about the emergent use of crypto-assets and e-money, possibly resulting in revenue losses also for the EU budget; (ii) the disparity in the sanctions applied based on the current provisions and other necessary punctual adjustments/improvements to be made to the Directive. In recent years, digitalisation and the use of technology in the financial sector has lead to increased efficiency gains and new products for consumers.

[129]See https: //ec.europa.eu/ info /law/ better-regulation /have -your -say/ initiatives/.12632-Tax-fraud-&-evasion-strengthening -rules-on- administrative- cooperation - and- expanding the exchange- of - information _ e n.
[130] COM/2020/593 final.

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Crypto assets are digital assets based on distributed leger technology and cryptography. The e-money institutions as well as e-money (i.e. a digital alternative to bank notes and coins allowing users to make cashless payments with money stored on a card or a phone, or over the internet) found its regulation through Directive 2009/110/EC as well as by the second Payment Services Directive (2015/2366/EU).[131] In March 2018, the G20 Finance Ministers assessed in this respect that technical innovation can improve the efficiency and inclusiveness of the financial system and the economy. However, crypto-assets raise issues with the respect to consumer and investor protection, market integrity, tax evasion, money laundering and terrorist financing. The lack of centralized control for crypto assets, its pseudo-anonymity, valuation difficulties, hybrid characteristics and the rapid evolution of the underlying technology as well as their form are challenging in regard to tax obligations. Furthermore, this form of assets can be used for payment as well as investment purposes, which makes its classification and the potential tax compliance even more difficult. These difficulties follow from the need to identify the relevant intermediaries, the reportable event, the valuation of assets and the available information among other things, Similar to "traditional" financial instruments, income derived from crypto-assets could be subject to taxation. However, proper enforcement of tax obligation relies on a proper reporting and the ability of tax administrations to have access to the information. The existing provisions of the DAC provide for an obligation for financial intermediaries to report to tax administrations and for an exchange of information between Member States. For crypto-assets and e-money, there is no such obligation to report as crypto-assets and e-money as well as the relevant intermediaries for these assets are not currently fully covered by the Directive and hence national tax authorities cannot get this information from each other. Intermediaries could probably not be expected to have access to the same type of information as they would have in the case of traditional financial services. This is particularly worrying in an area where all platforms are digital and therefore easily move their activities between Member States and easily carry out cross-border activities. Overall, the level of tax transparency is very low as this new technology is also used to create, hold and transfer assets without third-party intermediaries. Furthermore, in the light of the exchange of information from financial institutions on financial accounts set up by DAC2 in 2014, these developments may lead to the erosion of the integrity of such exchanges as a tool in tackling offshore tax evasion. The compliance of crypto-assets and e-money institutions with the DAC2 exchange requirements is essential and should be tackled

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

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by this Directive either as a self-standing provision or as an extension to existing DAC2 provisions or even both in order to cover all the unique particularities of these instruments.

The proposed Regulation on markets in crypto-assets establishes uniform requirements for transparency and disclosure for crypto-asset service providers and issuers as well as for e-money institutions. The said Regulation sets a useful framework also for tax purposes, but from a tax perspective, the high level of price fluctuations is in itself a problem for the valuation, which is key for the computation of the overall capital and of capital gains for tax purposes. Considering these aspects, the objective of this initiative should be to ensure adequate tax transparency, with a view to ensuring a proper taxation. To do so, the initiative will need to define crypto-assets in order to determine the material scope of the Directive as well as to identify the relevant intermediaries for tax, common reporting and due diligence purposes. The Impact Assessment will consider which assets should be included; for instance, whether so-called stable coins and e-money need to be covered by the scope. Moreover, there is a need to address some inefficiencies of the current Directive, notably the limited provisions on sanctions and other necessary punctual adjustments/improvements (e.g. possible updates needed to align with the OECD).

The differences between Member States regarding the effectiveness of sanctions are still extensive and therefore, should be addressed by this proposal. Provisions for introducing or enhancing administrative cooperation in the field of direct taxation would be based on Article 115 of the TFEU, which stipulates that the main rationale for EU action in the field of direct taxation is that the functioning of the Internal Market would be hampered by the operation of uncoordinated national legislation. Promoting EU-wide standardisation of the reporting rules would help taxpayers to comply with reporting obligations across the Internal Market and make the EU intervention more effective and efficient. It would allow the users of the new developing instruments to comply with existing reporting obligations and help tackling the offshore tax evasion.

The reporting will be accompanied with exchange of information and, as such, enable the tax administrations to obtain information necessary to perform the risk analysis and facilitate tax control of crypto-assets and e-money.[132] Avoiding duplication and inconsistencies among national practices is essential when it comes to streamlining administrative cooperation. Cooperation has to be based on common rules and ways of working.

[132] With regard of an action plan endeavouring a fairer and simpler taxation, which aims to support the recovery strategy cfr. EC, Communication from the Commission to the European Parliament and the Council, An action plan for fair and simple taxation supporting the recovery strategy, COM(2020) 312 final, https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52020DC0312&from=EN.

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The general objectives of the initiative are to ensure the proper functioning of the Internal Market, reduce tax evasion and other forms of tax abuses, simplify compliance and increase the confidence of European citizens in the fairness of the tax system while ensuring fair competition in the Internal market. The specific objectives of the initiative are to enable tax administrations to obtain information that is necessary to control that taxpayers pay their fair share, in particular taxpayers who earn money via crypto- assets, as well as to provide for better cooperation across tax administrations and keep business compliance costs to a minimum by providing a common EU reporting standard. The impact assessment will consider what data should be collected and exchanged among national tax administrations and the impact of different policy options. The aim is to collect only the data necessary to perform the risk analysis and facilitate tax control of the crypto-assets and e-money. The baseline scenario used as benchmark will consider the current national practices and legislation (where existing) on mandatory transmission of data on crypto-assets and e-money to national tax authorities. Concerning administrative cooperation more broadly, the baseline scenario is well described in the evaluation from September 2019 and past reports of the Commission on how cooperation among EU national tax authorities in the field of taxation is working. The Commission will consider whether guidelines (soft-law) addressed to Member States tax administrations and crypto-assets and e-money operators may eventually achieve the objectives. Otherwise, it will be considered whether an amendment of Council Directive 2011/16 could be necessary to: Include relevant data from crypto-assets and e-money under the provisions for mandatory automatic exchange of information between Member States. The specifics of the amendment may vary depending on different operational technical arrangements for the transmission and exchange of data and the regulatory burden, costs, benefits and savings related to it. It is of outstanding importance to strengthen and make available provisions for a better administrative cooperation. The intervention will have two main impacts, namely on tax revenues, i.e. direct taxation and on EU competitiveness i.e. even if the impact of the new Directive on competitiveness should be negative, it is expected that the benefits generated by this proposal will offset such disadvantages. It is expected that the effect on tax revenues will be positive. Thanks to the introduction of stronger rules of cooperation between tax authorities and reporting of tax information on crypto- assets and e-money to tax administrations, the latter will have more tools to check that taxpayers pay their fair share.[133] This will in turn encourage that taxable activities and their revenue and income are reported accurately from the start, thanks

[133]COM (2020), Ref. Ares(2020)7030524 - 23/11/2020, The Inception Impact Assessment is provided for information purposes only. It does not prejudge the final decision of the Commission on whether this initiative will be pursued or on its final content. All elements of the initiative described by the Inception impact assessment, including its timing, are subject to change.

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to an effect of deterrence of non-compliance. When it comes to costs of compliance, an EU wide common reporting standard for crypto-assets and e-money will likely keep to a manageable level the compliance costs and burdens for both markets operating in different EU countries rather than potentially 27 different reporting requirements. Introducing common reporting standards for crypto-assets and e-money as a source of income should therefore result in lower compliance costs. Standardised common reporting of crypto-assets and e-money is an important tool for tackling offshore tax evasion. Fair(er) taxation is expected to have a positive social impact. A well-functioning tax system has a stronger distributive role to convert the public revenues into public services for the benefit of all citizens. The initiative is expected to have no significant environmental impacts. Additional revenues generated from increased tax compliance will increase resources available, among others, to environmental protection. The protection of fundamental rights and especially data protection must be ensured. In particular, the impact of the proposed options on the data protection must be duly assessed. The set of data elements to be transmitted to tax administrations must be limited to the minimum necessary to detect non-compliant underreporting or non- reporting, and in line with the General Data Protection Regulation (GDPR) principles and obligations. Also, the preferred option must be proportionate and not go beyond what is needed to achieve the goal. The impact assessment endeavours to establish - where applicable - whether an EU harmonised framework may result in a low level of regulatory costs (administrative burden/compliance costs) for both tax administrations and businesses – especially compared to the economic impacts the measure could achieve. The analysis will look into the relevant costs and burden reduction potential, to the extent possible. A structured and harmonised transmission of data may simplify technical and administrative processes for all the stakeholders, resulting in easier handling and management of the data. This simplification potential will be identified and quantified as much as possible. An impact assessment is being prepared to support the preparation of this initiative and to inform the Commission's decision.[134]
The work on data collection and the economic analysis has already started. The assessment's publication is expected at the same time as a possible legislative proposal. With regard of a Digital Finance Strategy for the EU was adopted on 24 September 2020. It endeavours a Proposal for a Regulation of the European Parliament and of the Council on Markets in Crypto-Assets At the OECD level, WP 10 on Exchange of Information and Tax Compliance and WP 2 on Tax Policy Analysis and Tax Statistics are discussing and analysing the influence of digital

[134] COM (2020), Ref. Ares(2020)7030524 - 23/11/2020, The Inception Impact Assessment is provided for information purposes only. It does not prejudge the final decision of the Commission on whether this initiative will be pursued or on its final content. All elements of the initiative described by the Inception impact assessment, including its timing, are subject to change.

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financial markets for several years.[135] In order to trace back our original topic concerning taxation of football it can be stated at this point that, a football or sports specific approach could create greater compliance and control measures in relation to topics in need thereof, such as image rights income and agent fee taxation. European cooperation in this field would allow authorities to have a better view on taxpayers receiving image rights income or benefits linked to clubs paying for individual agent fees, allowing tax authorities to have a better view on practices applied and remedy excesses. Notwithstanding the interim conclusion of Member States being united in diversity, it could be said that Member States on their own are pursuing a common aim, at least are conscious of the impact of tax on the competitiveness of their national football leagues. Thereby, one can also not lose track of tax competition with non-EU countries. EU soccer leagues are increasingly facing competition from low tax jurisdictions like the UAE or Qatar, or countries that specifically target football players like Turkey[136] and (until recently) China .[137] Most of the Member States selected for research in this study, either have specific measures in place which are an incentive to football players' income taxation (or athlete income in general), had them in place in the past or consider the introduction of these measures. Viewed in a comparative perspective, the (income) tax treatment of professional football players in EU Member States appears as lively and subject to frequent change. The following categories can be distinguished: Countries with tax incentives for (amongst others) football players' income: The Netherlands, France, Italy and Belgium.

The Netherlands, France and Italy do not have targeted incentives for the football industry, but all allow football players to enjoy the benefits of a rather beneficial expatriate tax regime. These regimes allow the football players (and indirectly the clubs) to enjoy a tax-exempt part of their salary and thus basically allow for an optimization of the taxable base of the players' income. The Netherlands and France allow for a 30% exemption, whereas Italy allows a 50% exemption. The application of these regimes is subject to restrictions, mainly in the Netherlands. Belgium also has an expatriate tax regime but does not allow application of this regime by football players. This Member State does offer a tax incentive in relation to wage withholding tax for sports clubs, where 80% of the wage withholding tax does not need to be paid to the tax administration but can be spend by the clubs (mostly subject to the condition that the incentive is spent on the education of youth players). Countries

[135] This work is reflected in several documents and in "Taxing virtual currencies: an overview of tax treatments and emerging tax policy issues" http://www.oecd.org/tax/tax-policy/taxing-virtual-currencies-an-overview-of-tax- treatments-and-emerging-tax-policy-issues.htm .

[136] Turkey did however make changes to its tax policy, as a consequence of which the tax benefits for players decreased.see http:// vergiport.com/blog/new-regulations-on-the taxation-of-football-players-in Turkey.

[137] See https://www.scmp.com/sport/football/article/3113955/chinese-super-league-tightens-salary-and-spending-rules-warning.

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who had certain tax incentives in place: Spain. Spain introduced an expatriate regime in 2004, which is often referred to as the Beckham-law.
This regime allowed for the qualification as tax non-resident for football players migrating to Spain and the use of preferential tax rates. As of 2015, the regime can no longer be applied by football players. Countries with specific tax regimes, albeit not applicable to football players: Portugal. Portugal introduced the non-habitual tax resident regime in 2009. This regime amongst others allows skilful workers to benefit from a preferential 20% tax rate on employment income. Albeit regretted in legal doctrine, this highly beneficial tax regime is not open for football players. Countries with no specific tax regimes as already mentioned relates to the german legal order. Germany has no specific income tax regimes in place from which professional football players could benefit.[138]

[138] EU-COM *Taxing professional football in the EU. A comparative and EU analysis of a sector with tax gaps,* , European Parliament, Luxembourg, 2021, p. 59 ff.

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