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Sports facilities taxation : Italian legislation and proposals of reform under an European approach.

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(Avvocato)

Summary

Abstract

The paper analyses the Italian sport facilities taxation with a general overview of the European economy system and offers suggestions with regard of taxation proposals embracing a common European approach. A brief introduction into the German Federal System concerning the taxation of sport facilities will be highlighted. Furthermore the European relevance concerning the important function of sport should be strengthened at European level.

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1. Introductive aspects.

Sport is a large and fast-growing sector of the economy that already accounts for more than 2% of Europe's total Gross domestic product (GDP) and almost 3% of employment in the European Union (EU). Within the sports economy, football, as the world's leading, most commercialised, and mediatised sport, takes the most prominent place and continuous to grow. In Europe, football's key actors are active on the EU internal market. 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 approach 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 hindering access to the internal market dependent on the place of entry, and thereby hindering the establishment and functioning of a true internal market. To address this issue, it is advocated that the legislator should level the regulatory and supervisory playing field and introduce uniform harmonised high-standard good governance rules for football agents and professional football clubs, through a EU license system (including anti-money laundering legislation), in addition to an adequate monitoring system and appropriate sanctions in case of non-compliance. Also, the tax and social security treatment of professional football players' remuneration contributes to unlevelled playing fields in Europe: throughout the EU there are various approaches towards the taxation and social security position of professional football. Nevertheless, a common thread, that becomes 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, but most realise the importance of an attractive tax regime for a continuously growing industry.

1.1 Sport and sport facilities.

The report in concern has been presented at the conference "public policies in Europe in the field of Sport and sports facilities", held in Rome, University of Rome Foro Italico, on 3 October 2014. The action plan includes, among other proposals, the development of guidelines on physical activity and the creation of a European network for the promotion of sport as a health benefit; greater coordination of the fight against doping at European level; the attribution of a European label to schools encouraging the practice of physical activities; the launch of a study on volunteering in sport; improving social inclusion and integration through sport through European programmes and funds; promoting the exchange of information, experience and good practices on the prevention of racist and violent incidents between repressive services and sports organisations; strengthening the use of sport as an instrument of

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European development policy; the creation of statistics to quantify the economic impact of sport; the carrying out of a study on the public and private financing of sport; an impact assessment on the activities of players' agents and an assessment of the added value of possible Community intervention in this field; better structuring of the dialogue on sport at Community level, in particular through the organisation of an annual forum on sport; stepping up intergovernmental cooperation on sport; promoting the creation of social dialogue committees in the field of sport and support for employers and employees. As you know, sport as a human practice exercised for pleasure, health, competitive and professional educational purposes, is a particularly important economic sector, producing more than 2% of the European Union's gross domestic product and employing more than 7 million professional figures (3.5% of total employment). Starting from this premise, the European Commission (document of 19 April 2014) has identified some concrete actions to be implemented to promote the use of sport practices sports also through financial and tax measures through which to promote the construction of sports facilities and guarantee access and social use. The need, long felt and taken up by the recent European Union document, to define a sort of decalogue of incentive measures for sports infrastructure and for the promotion of physical activities, is still unmet. More than in other areas, the fiscal discipline in the field of sports facilities and organization appears very fragmentary and above all devoid of a coherent inspiring design. The attempt at analysis, which is being conducted here, fully highlights the inability of Community and internal legislation to deal with the various issues that are gathering in the matter between value added taxation and local taxation. Nevertheless, the effort made can offer interpretative solutions pending a more mature awareness of the promotional function that tax legislation can perform.

1.2 The exemption of the rental of immovable property for VAT purposes between European and national jurisprudence.

Among the provisions, also sectoral, favourable in terms of spaces to encourage and allow the practice of sports, we must recall those dictated by the European directives on VAT concerning the exclusion from application in case of lease. In this regard, it should be noted that the tax treatment of the rental of immovable property for VAT purposes has been repeatedly brought to the attention of the European courts in order to establish, through the reference for a preliminary ruling to the EU Court of Justice, a common and uniform interpretation of the applicable provisions. More specifically, the requests for a preliminary ruling referred for a preliminary ruling concern the interpretation of art. Article 13(B)(b) of the Sixth Directive 77/388/EEC on the harmonisation of the laws of the Member States relating to turnover taxes – Common system of value added tax: uniform basis of assessment subsequently replaced by Directive 2006/112/EC on the common system of value added tax. Under

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this provision, Member States exempt from VAT "the rental and rental of immovable property", under the conditions established by them to ensure the correct and simple application of the exemptions and to prevent any possible fraud, evasion and abuse. According to settled case-law, the fundamental characteristic of the concept of "letting of immovable property" lies in the conferral on the contractual partner, for an agreed duration and for consideration, of the right to occupy a property as owner and to exclude any other person from the benefit of that right. In order to assess whether a given contract can be subsumed in that definition, it is necessary to take into account all the characteristics of the transaction and the circumstances in which it takes place by adopting a substance over form approach, that is, by bringing out the objective nature of the transaction, irrespective of the classification that the parties give it. Art. Article 13(B)(b) of the Sixth Directive constitutes a derogation from the general principle that VAT is levied on all services supplied for consideration by a taxable person and as such requires a strict interpretation. Therefore, if even one requirement of the concept of "letting of immovable property" fails, the provision cannot be applied by analogy or extensively. A case-by-case analysis is therefore necessary to assess the circumstances, characteristics and essential elements of each rental transaction in order to qualify it in the light of the Sixth Directive. However, as stated in settled European case-law, this rule of restrictive interpretation does not mean that the terms used to specify the exemptions referred to in art. 13 must be interpreted in a way that would deprive those exemptions of their effects. They must be interpreted in the light of the context in which they form part and of the purpose and structure of the Sixth Directive, taking particular account of the ratio legis of the exemption at question. The Court of Justice, in its judgment of 18 January 2001 in Case C-150/99 Stockholm Lindöpark, was called upon to rule on a lease of a golf course reserved for undertakings: the only tenants were only undertakings which allowed their staff or customers to play golf on the ground so equipped. In their judgment, the European courts ruled that the activity of managing a golf course generally involves not only the passive provision of land, but also a large number of commercial activities, such as supervision, management and constant assistance by the provider, the provision of other facilities, and so on. Finally, the judges state that, in the absence of very special circumstances, the rental of the golf course does not constitute the main supply and, therefore, the tax exemption cannot be applied. The Court of Justice has also recently been concerned with a similar question concerning the exemption from VAT of a lease of immovable property and, more precisely, the provision of facilities of a sports facility used exclusively for football purposes, including the right to use and exploit on certain occasions the playing area of the football stadium (the ground), as well as changing rooms for players and referees up to a maximum of 18 days per single sports season. The judgment of the Court of Justice of 22 January 2015, Case C-55/14, Régie

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communale autonome du stade Luc Varenne, concerns once again the exegesis of art. In order to determine whether the granting for consideration of the availability of a football stadium on the basis of a contract reserving certain rights and prerogatives to the owner and providing for the provision by the owner of a series of services, in particular maintenance, cleaning and standardisation services, is granted for consideration by the owner, representing 80% of the contractually provided consideration, constitutes a "lease of immovable property" under the aforementioned directive. In this judgment, too, the Court ruled that the use of the football field does not constitute the predominant performance of the operation, characterising it as the lease of immovable property: the service rendered concerns, in fact, a more complex service of access to sports facilities, which also includes the supervision, management, maintenance and cleaning of sports facilities. The activity carried out is, therefore, to be framed more properly in the provision of a complex service of access to sports facilities and not in the simple provision of land. The sixth directive recognizes a sort of favour with reference to the provision of services related to the sports universe: art. Article 13A(1)(1)(.m) provides for an exemption from tax for the supply of services linked to the practice of sport and physical education provided by non-profit-making organisations. This exemption is expressly limited to services provided by non-profit-making organisations: such services which are provided by profit-making entities do not fall within the scope of the exemption. More generally, art. Article 13 seeks to exempt from VAT certain activities in the public interest, including those relating to the practice of sport and physical education, in order to encourage that type of activity. The exemption granted is not general in the case of all supplies of services linked to those supplies of services but is subject to the occurrence of certain conditions. First, the provision of services closely linked to the practice of sport and physical education must be provided by a non-profit-making organisation. Secondly, the supply of services by those bodies may be exempted as transactions in the public interest, provided that they are provided to persons engaged in sport or physical education: they are therefore services which are essential for the performance of the practice of sport or physical education . In the wake of the consolidated orientation of European jurisprudence, there are also some rulings of the Supreme Italian Assembly that address the complex issue of the subjectivity to VAT of the management of sports institutions. The Court of Cassation has been called to rule on the subjection to VAT of the lease of the municipal stadium to the city football club . That leasing activity was carried out by a territorial public body (municipality of Perugia) using assets from its assets: the service would have had to escape from tax in the absence of the subjective requirement of the tax consisting in the exercise of business by the local authority. In other words, the lease in question should not have constituted a business activity relevant to the effects of the application of VAT as it is carried out by a public body that uses its

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administrative offices for the management of the contract and not already of an organization in the form of an enterprise. The Court confirmed this argument by pointing out that the activity in question was not carried out by the Municipality as a public authority : art. 4, paragraph 4 of Presidential Decree no. 633/1972 which establishes with regard to the subjective assumption of application of the tax that for entities which do not have as their exclusive or main object the exercise of commercial activity, which include local authorities, are considered to be carried out in the exercise of businesses, and as such are included in the scope of vat, only the supply of goods and services carried out in the course of commercial activities. In adherence to an important italian doctrine if a facility is intended for the community, or rather if it can be by an unspecified number of persons, it would certainly be intended for a public service (promotion of sport) and would therefore be service (promotion of sporting activity) and, consequently, would fall within the category of assets which are not available, whereas, in my opinion, if a sports facility is not for general use but only for the particular use of a given sports club (or a specific club), it would be considered a public asset. However, in my opinion, if a sports facility is not for general use but only for the particular use of a given sports club (or a multi-purpose and diversified use as a venue for congresses or concerts), since it is the venue for competitions by its own members or card-carrying members, it is difficult to believe that it is intended for a public service as defined above and, consequently, can be classified as a non-disposable asset, but rather its allocation among the available assets of a municipality seems more natural. Therefore, in the first case, it is necessary to ascertain whether, in carrying out its activities, the local authority has authoritative powers, or rather acts in accordance with its own public-law regime through administrative acts and measures and/or through regulations; that hypothesis constitutes an authoritative activity, within the meaning of Community case-law, and as such is excluded from the scope of VAT due to the lack of subjective requirements, provided that, clearly, the activity is in clear competition with the same activity carried out by private operators. On the other hand, in the second case, the same entity, in view of the nature of the property (available assets) is required to use, in any event, a purely private legal regime and, consequently, by carrying out an activity in a manner similar to that of private operators, it will exercise the same with entrepreneurial criteria and therefore it would be subject to VAT for all purposes, since the subjective requirement, as well as the objective one, would be met. Therefore, as can be seen, in order to arrive at a correct VAT treatment, public bodies, in the management of their own assets, must ascertain the manner in which the activity is carried out and only then must they establish whether or not it is relevant for the purposes of the tax, in accordance with the above considerations. The administrative activity of the municipal offices consisting in the management of the lease (collection of rents and the issuance of invoices), therefore, can not configure a

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business activity but falls within the activity of disposal of its assets to be qualified as an exempt operation or "out of the FIELD VAT" for non-existence of the subjective assumption.

1.3 The application of the reduced VAT rate in the construction of neighbourhood sports facilities as secondary urbanization works.

No. 127-quinquies of Table A, part three, attached to Presidential Decree no. 633/1972, provides for the application of the VAT rate of 10%, inter alia, to the primary and secondary urbanization works listed in art. 4 of Law no. 847 of 29 September 1964, supplemented by art. 44 of Law no. 865 of 22 October 1971. By virtue of this provision, the "neighborhood sports facilities" are also secondary urbanization works. Even in this case, since it is a special and derogatory rule of the ordinary regime, it must be interpreted restrictively and exhaustively so that only the works identified by art. 4 of Law no. 847/1964 through the aforementioned no. 127-quinquies) can take advantage of the reduced VAT rate. The concept of neighbourhood sports facilities, however, has not yet been fully defined, leading to uncertainty in its application and doubts about the tax treatment of urbanisation works. Ministerial Circular No 14 of 17 April 1981 limited itself to establishing that, in order to qualify real estate works as secondary urbanisation works, they must be carried out in function, that is to say, at the service of, urbanised areas or to be urbanized. These works are therefore intended to produce services of collective interest, in the fields of economy, education, culture and leisure, within a town, in order to improve the quality of life of its inhabitants. These are, therefore, works that, although not necessary for the satisfaction of the primary needs of man (needs satisfied by the primary urbanization works), are indispensable to increase the standard of living of residents in the inhabited center concerned, and that are encouraged by the Legislator using a facilitative rule that provides for the applicability of the reduced VAT rate. Regarding the concept of neighbourhood, it was clarified by Ministerial Resolutions No 320947 of 10 June 1985 and No 399623 of 3 October 1985 that this term used by the legislature also referring to sports facilities cannot be interpreted only literally by minimising its scope of application but it is necessary to provide a logical-evolutionary exegesis, taking into account the current urban reality. Secondary urbanization works must be qualified as "neighborhood" not only if they are intended to be used by the inhabitants of a given urban area, but also when they are made available to the entire population of a small town. So much so as not to limit the application of the tax benefit only to works carried out in those municipalities that expressly provide for the division of their territory into neighbourhoods. In order for the construction of a neighbourhood sports facility to be considered facilitated, it is necessary that such a facility be intended for public use or be made available to the whole community, even if against payment of a fee, and is not intended to be used exclusively or mainly by particular categories of subjects,

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such as members of sports clubs or municipal employees. In light of these considerations, the Financial Administration has qualified as a neighbourhood sports facility that enjoys the facilitated VAT rate the construction of an outdoor swimming pool built in project financing in which the private subject, based on a concession, will have the management for thirty years of the entire sports facility. The plant, in fact, is to be considered of public utility and intended for the community, even if built and managed with a thirty-year concession by a private company; moreover, with regard to the possible performance of a competitive activity, as clarified in Ministerial Resolution No 361922 of 4 November 1986, it is sufficient that that activity be, as in the present case, completely secondary and residual. Conversely, a neighborhood sports facility used exclusively or mainly by subjects enrolled in sports federations dependent on bodies or built above all for the performance of competitive activities cannot be considered intended for the community. The Financial Administration has further pronounced itself in a case concerning the construction of a multi-sports facility by a municipality, usable in a multi-purpose way, at the service of the entire provincial, resident and tourist users, to be allocated also to the performance of sporting events and structured with stands and parking lots to accommodate the presence of the public sanctioning the application of ordinary VAT . Similarly, Resolution No. 362270 of October 2, 1986 established that the construction of an ice stadium primarily intended as a federal training center for ice sports, built from an Olympic speed plate and a hockey field intended to serve a large catchment area, is not subject to the subsidized rate.

More recently, the Revenue Agency has returned to deal with the matter by denying the application of the reduced rate to the construction of snow-growing systems by applying a strict reading of the provision in comment. These facilities built on the occasion of the XX Winter Olympic Games "Turin 2006", can not benefit from the reduced VAT rate because they are not among the works governed by Law no. 847/1964. So much so because a broad interpretation of the qualification of "neighbourhood" sports facilities that also includes the facilities in question for the application of the 10 percent VAT rate provided for by no. 127-quinquies of Table A, part III, annexed to Presidential Decree no. 633 of 1972, is not admissible. These facilities, in fact, cannot be configured as neighborhood sports facilities and, consequently, cannot be counted among the secondary urbanization works identified by the aforementioned art. 4 of Law No 847/1964. The work of sports facilities in question, in fact, was not carried out pursuant to and with the procedures referred to in Legislative Decree 3 January 1987, n. 2 converted, with amendments, into Law 6 March 1987, n. 65 containing urgent measures for the construction or modernization of sports facilities, for the construction or completion of basic sports facilities and for the use of additional funding in favor of activities of tourist interest. Art. 1, paragraph 1 of the decree defines the subjects, procedures and methods of financing

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for the implementation of extraordinary programs of interventions for sports facilities aimed at the construction, expansion, rehabilitation, restructuring, completion, improvement, arrangement of parking and service areas and adaptation to safety standards of sports facilities intended to host the matches of the 1990 World Cup according to the indication of CONI, to meet the needs of the championships of the various sports disciplines with multifunctional structures as well as to promote the exercise of sports activity through the construction of multifunctional structures. Art. 3-bis of Legislative Decree no. 2/1987 provides that the works carried out for the pursuit of the purposes identified in the decree "... are regulated in accordance with Part Two, no. 22) of Table A) annexed to the Decree of the President of the Republic of 26 October 1972, n. 633". The aforementioned n. 22) of Table A, part II, has been replaced by n. 127- quinquies of Table A, Part III, attached to Presidential Decree no. 633 of 1972, pursuant to which the primary and secondary urbanization works listed by art. 4 of Law No 847 of 1964. The works carried out on the basis of the rules laid down by Legislative Decree no. 2/1987, therefore, were expressly subject to a VAT rate of 10 percent . The snow-covered systems in question, on the other hand, are made as part of the "Works accompanying the XX Winter Olympic Games Turin 2006", for which there is a special and distinct planning and public allocation procedure governed by Law 9 October 2000, n. 285 as well as by the subsequent Law 1 August 2002, n. 166, art. 21.
In the absence of an express regulatory provision that assimilated the work in question to the neighborhood sports facilities or that established the application of the subsidized VAT rate, the ordinary VAT rate must be applied.

2. Derogations from the State aid framework for the construction and maintenance of sports infrastructure.
The instruments that can be used by the State and local authorities to support the construction or maintenance of sports facilities are certainly numerous; these may include direct subsidies, purpose taxes , subsidised tax loans, etc.
This public intervention in the sports sector and, more generally, in the free market is carefully viewed by the Community institutions, which carefully evaluate direct or indirect financing measures by economic agents.
Article 107 TFEU (ex Article 87 of the Treaty) defines for State aid those favourable measures granted by States, or through State resources, in whatever form, which, by favouring certain undertakings or the production of certain goods, distort or threaten to distort competition.
This prohibition is not absolute but relative, thus allowing derogations from the strict European framework on State aid.
Among these exceptions, paragraph 2 of art. Article 107 TFEU refers to aid of a social nature granted to individual consumers, provided that it is granted without

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discrimination on grounds of the origin of the products; aid to make up for damage caused by natural disasters or other exceptional occurrences; aid granted to the economy of certain regions of Germany affected by the division of the State, in so far as it is necessary to compensate for the economic disadvantages caused by that division.

To these are added, pursuant to paragraph 3 below, aid intended to promote the economic development of regions where the standard of living is abnormally low, or where there is a serious form of underemployment; aid to promote the implementation of an important project of common European interest or to remedy a serious disturbance in the economy of a Member State; aid to facilitate the development of certain economic activities or regions, provided that it does not adversely affect trading conditions to an extent contrary to the common interest; aid to promote culture and heritage conservation, where it does not adversely affect trading conditions and competition in the Union to an extent contrary to the common interest; the other categories of aid, determined by a Council Decision on a proposal from the Commission. Public intervention through the various modes of direct contribution (e.g. transfers, public subsidies) or indirect contribution (e.g. tax breaks), therefore, could constitute undue State aid that risks distorting competition and, consequently, the proper functioning of the European single market.

However, as demonstrated by regulation no. 651 of 17 June 2014, the European Commission's approach to public intervention appears less rigorous, declaring certain categories of aid, including those for sports infrastructure, compatible with the common market in application of the exemption clause contained in Articles.

107 and 108 TFEU. In this way, "horizontal" State aid, i.e. aid of general application and not limited to a specific sector of activity or to specific categories of undertakings, was exempted from the obligation to give prior notification. Both in light of the growing importance of the promotion of aspects related to sport in Europe, taking into account the specificity of sport, its structures based on volunteering and its social and educational function as provided for by art. 165 TFEU.

Moreover, as stated in the 2007 White Paper on Sport, the European Commission "... understands the importance of public aid to basic sport, and is in favour of such support, if provided in accordance with Community law." As stated in recital 74 of Regulation No 651/2014, investment aid for sports infrastructure benefits from the block exemption provided that it fulfils specific conditions. In the field of sport, various measures taken by Member States may not constitute State aid because the beneficiary does not carry out an economic activity or because the measures do not affect trade between Member States.

This could be, in certain circumstances, the case for aid measures which are purely local in nature or relating to amateur sporting activities. The compatibility conditions

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for aid for sports infrastructure should ensure, in particular, open and non-discriminatory access to infrastructure and a fair process of awarding concessions to a third party for the construction, modernisation and/or management of the infrastructure.

Art. Article 55 of the Regulation precisely identifies the conditions to be respected so that aid for sports infrastructure is compatible with the internal market and is exempt from the notification obligation.

First of all, it is necessary that the use of the sports infrastructure is not reserved for a single professional sportsman; the time of use by other sportsmen, professional or not, must annually represent at least 20% of the total time; if the infrastructure is used simultaneously by several users, the corresponding fractions of usage time are calculated. Access to sports infrastructure must also be open to multiple users and granted in a transparent and non-discriminatory manner. Similar disclosure is required with reference to the concession, or other act of conferment, in favour of a third party for the construction, modernization and / or management of the sports infrastructure. Where these conditions are verified, state aid may be granted without prior notification, which may take the form of investment aid, including aid for the creation or modernisation of sports infrastructure or operating aid for sports infrastructure.

In the latter case, reference shall be made to the costs of the provision of services by the infrastructure which include the costs of personnel, materials, contracted services, communications, energy, maintenance, rent, administration, etc., but exclude depreciation and financing costs if these have been included in the investment aid.

Recently, the European Commission considered that some support measures in favour of skiable areas of local interest in Tuscany 16 do not qualify as State aid.

In order to avoid an adverse judgment by the European Commission and the consequent recovery of the aid granted, the Italian authorities have notified the Community institution of the provision of financing in favour of ski areas. So much in compliance with art. 45 of Law no. 234 of 24 December 2012 which lays down general rules on the participation of Italy in the formation and implementation of European Union legislation and policies, which has better defined the procedures for such notification to the Community Executive in order to ensure the unity of direction necessary for the protection of national interests in the field of State aid.

The aid was conceived as a "double-track" support as the beneficiaries are both SMEs and local public authorities that manage ski resorts and their sports centres.

More precisely, the aid to local public authorities is aimed at the purchase, adaptation, upgrading, safety and construction of ski lifts and artificial snow, as well as tracks and related facilities. The aid provided for public and medium-sized enterprises granted through specific public tenders concerns investments, the

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adjustment, modernisation and safety of cable cars and related structures, including the provision of control systems, as well as other expenses, such as rescue, safety, energy, amortisation of mortgage payments, leasing fees and track beating, which are necessary for the maintenance of cable cars or their facilities and collateral to eligible activities.

In the Decision in question, the European Commission acknowledged that facilities intended for sports activities in locations poorly equipped for the practice of winter sports and with limited tourist capacities tend to have a purely local catchment area and are not able to attract users who have the alternative of opting for facilities located in other Member States.

It follows that such aid is generally not capable of affecting intra-Community trade and therefore does not constitute State aid within the meaning of European State aid law.

Specifically, the Commission argued that cableway installations of local interest are those built in winter sports resorts with a number of installations less than or equal to three, for a total length not exceeding 3 km or those with a number of available hotel beds of less than or equal to 2,000 or with a number of weekly passes sold not exceeding 15% of the total number of passes sold. The recent decision of the Community Executive is in line with previous pronouncements of the same institution concerning similar cases of State aid which Italy has implemented in favour of cableway installations.

3. The exemption of sports facilities for the purposes of municipal taxation on buildings.

The sports facilities are exempt for the purposes of the ICI pursuant to art. 7, paragraph 1, letter i) of Legislative Decree 30 December 1992, n. 504 which exempts from the payment of the tax the properties used by the subjects referred to in art. 87, paragraph 1, letter .c), of the TUIR and intended exclusively for the performance of "meritorious" activities including sports. This exemption has also been confirmed by the IMU regulations that recall the regime of exemptions referred to in art. 7 of Legislative Decree no. 504/199218.

Buildings used by public and private bodies, other than companies, resident in the territory of the State and not having as their exclusive or main object the exercise of commercial activities if intended exclusively for the performance of sports activities are ope legis exempt from tax. The following art. 91-bis of Legislative Decree no. 1 of 24 January 2012, converted with amendments by Law no. 27 of 24 March 2012, also required that the exclusive use of properties for sports activities must take place in a non-commercial manner.

This legislative amendment has transposed the orientation of the jurisprudence of legitimacy that has constantly limited the scope of the exemption from the tax to the

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presence of non-commercial methods through which the activity by the non-commercial entity is carried out in the property.

As specified by art. 1, paragraph 1, letter .m) of Legislative Decree no. 200 of 19 November 2012 implementing the aforementioned art. 91-bis and which defines the modalities and procedures for the proportional application of the exemption from the IMU for real estate units intended for mixed use, in cases where it is not possible to proceed with the separate stacking of buildings or their portions used exclusively for the performance of institutional activities in a non-commercial manner, sports activities are those "activities falling within the disciplines recognized by the Olympic Committee Italian National (CONI) carried out by sports associations and their non-profit sections, affiliated to national sports federations or national sports promotion bodies recognized pursuant to Article 90 of Law no. 289 of 27 December 2002" .

Also in this case the legislative provision is derogating from the general principle of subjection to taxation of real estate so that it is necessary to provide a restrictive interpretation of the aforementioned art. 7. It is therefore necessary to assess the existence of both the conditions established by art. 7 to recognize the exemption from tax of a sports facility. It is, in fact, necessary to verify on the one hand the direct use of the buildings by the entity that has the possession (subjective condition) and on the other hand their exclusive destination to sports activities that are not productive of income (objective condition).

The Court of Cassation has repeatedly intervened in the matter specifying conditions and limits to enjoy the exemption in question.

The case-law of settled legality, in fact, has established that the exclusion from the tax can be granted if both the subjective and the objective condition are fulfilled. The exemption, therefore, is granted upon the occurrence of the objective requirement inherent in the performance of sports activities in the property as well as the subjective one identified in the belonging of the owner of the building to the category of art. 87 of the TUIR.

The objective condition exists when the properties are intended exclusively for the performance of "meritorious" activities identified by art. 7, paragraph 1, letter i) of Legislative Decree 504/199222. The jurisprudence of legitimacy, in fact, on several occasions has established that to enjoy the exemption the property must be used directly by the owner23: to benefit from the exemption the property must be used directly by the subjects referred to in art. 87, co. 1, lett.c) of the TUIR and that they have the "possession".

This interpretation, constitutionally oriented, received the endorsement of the Constitutional Court which, with two separate rulings, offered a reading of art. 7, paragraph 1, letter i) of Legislative Decree no. 504/1992 systematic and consistent with the tax system as well as with the principle of ability to pay. From a subjective

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point of view, the properties must be owned by the non-commercial entity as a user in order to make the owner entity that falls within the category referred to in the aforementioned art. 87, paragraph 1, letter .c), of the TUIR with the entity that uses the property itself. M Legislative Decree no. 200/2012 specifies that "the performance of sports activities is considered to be carried out in a non-commercial manner if the same activities are carried out free of charge, or upon payment of a symbolic fee and, in any case, not exceeding half of the average fees provided for similar activities carried out with competitive methods in the same territorial area, also taking into account the absence of relationship with the actual cost of the service". In an interesting jurisprudential arrest, the Court of Cassation ruled on the exemption for the purposes of the ICI of properties owned by the company Federcalcio srl by the Italian Football Federation (F.I.G.C.).

In this specific case, there has been a formal distinction between the owner (a limited liability company) and the user entity (a public body) although the FIGC is the owner of all the shares in the company so that the corporate form is nothing more than "... a legal form given to what is - in substantial reality - a mere organizational articulation of the public body, which, therefore, would exert de facto possession on the property using the company created by itself for this purpose.". The Court, however, does not go into more detail on the subjective profile by limiting itself to analysing only the objective requirement of the case in question. The buildings, in fact, were not intended exclusively and effectively for a consistent sporting activity, directly and not mediated, in the practice of a sport but in them instrumental activities, of an organizational or managerial type, were carried out. In the absence of the objective requirement, therefore, such real estate must be attracted to taxation. As, in fact, also clarified by ministerial practice, the exemption from the tax of real estate dedicated to sports activities must be granted only where "... sports activities falling within the disciplines recognized by CONI are exercised, provided that they are carried out by sports associations and their non-profit sections, affiliated to national sports federations or national sports promotion bodies recognized pursuant to art. 90 of Law no. 289 of 2002."

The practice document also specifies that for the granting of the exemption it is necessary that the owner of the property carries out in the building exclusively competitive sports activities organized directly (e.g. championship matches, organization of courses, tournaments) and does not limit itself to making the building available for the individual exercise of sport (for example: rental of tennis courts, management of swimming pools with paid entrances, rental of football fields to individuals or groups). It follows that the exemption must not be recognized to sports halls, fields and sports facilities in which the activity carried out by the institution is not directly "sports", but to rent spaces.

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In a further jurisprudential arrest, the Court of Cassation was called upon to rule on an invoked exemption of a sports complex comprising a football field, a covered soccer field with related services and the headquarters of the Regional Committee of the FIGC necessary to meet the needs of local amateur sports clubs.

The properties, although used for the exclusive performance of sports activities by the Committee as a private law association without legal personality, were owned by the company Federcalcio srl.

The Supreme Assembly considered that there was no exemption from tax in the absence of the subjective requirement: the taxable person of the tax is the company as the owner of the buildings which cannot enjoy the tax exemption as it is a commercial entity lacking, therefore, the quality of subject referred to in art. 87 of the TUIR.

The company, in fact, carries out a necessarily economic activity as it has the role of a capital company, also removing relevance to the use of the property for sporting activities.

3.1 Exemption from municipal tax on advertising and public billboard entitlement for advertising carried out in installations.

A further intervention of favour related to the tax area concerns the municipal tax on advertising that affects the availability of the plant through which the advertising message is disseminated.

The tax is governed by Legislative Decree no. 507 of 15 November 1993 and attracts the dissemination of advertising messages "in public places or open to the public or that it is perceptible from such places" that takes place in the municipal territory.

Such dissemination is subject to taxation only if it is carried out in the exercise of an economic activity, with the main purpose of promoting the demand for goods or services, or aimed at improving the image of the advertised subject.

The facilitation provision was introduced by art. 1, paragraph 128, of Law no. 266 of 23 December 2005 (2006 Finance Law) which provides for the exemption from the advertising tax of advertising activities carried out in facilities used for amateur sports events with a capacity of less than three thousand seats, carried out by associations amateur sports clubs and amateur sports clubs incorporated into non-profit corporations. This is an interpretative provision of art. 90, paragraph 11-bis of Law no. 289 of 27 December 2002 (2003 Finance Law) containing a favourable provision for amateur sports activity, aimed at exempting from tax amateur sports clubs that regularly display advertising space in sports facilities on the occasion of amateur sports events.

In the face of this provision, the attitude of the municipalities has often been fragmented and uneven since some local authorities have established limits to the application of the facilitation considering that the exemption did not operate when

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the advertising was carried out by commercial subjects who advertised their name, brand or product within the sports facility. By way of example, advertising made by the sponsor was therefore not considered exempt.

Anci also expressed its opinion in this sense, considering that an extension of the exemptions to commercial advertisements of the sponsors of the same companies is not legitimate, since the rationale of the exemption rule would refer subjectively only to the direct activities of amateur sports clubs.

The Tax Administration took the opposite view, which with a note of 3 April 2007, n. 1576 / DPF provided important clarifications regarding exemption from the municipal tax in question for advertising made in the facilities used for amateur sports events with a capacity of less than three thousand seats. The ministerial interpretation of the provision states that the exemption from the payment of the tax must be applied to any advertising exhibition aimed at sports facilities, carried out by the subjects identified by art. 90, paragraph 1, of Law no. 289 of 27 December 2002, i.e. amateur sports associations and amateur sports clubs incorporated into non-profit corporations. The mens legis is, therefore, to encourage advertising "in any way realized" by subjects who use modest facilities for the performance of amateur sports events.

It follows that the exemption must also be extended to cases in which advertising messages are displayed which do not specifically concern the companies using the sports facilities, but third parties. It is not relevant, therefore, that advertising is recognisable outside the sports facility since it is sufficient for the exemption to be applicable for advertising messages to be displayed on structures inside the sports facility. For the purposes of granting the exemption, it is therefore sufficient that the advertising messages are displayed on the internal structures of the sports facility, their possible visibility even outside the facility itself being irrelevant.

3.2 New preliminary aspects concerning the Italian Sport´s reform.

It seems now useful to briefly introduce the new approved reforms affecting the sports sector, which will be applied in the following years. The "Reform of the Third Sector" denotes to the set of rules that has re-regulated the non-profit and the social enterprise. To date, the legislative intervention has not yet been completed, as not all the acts provided for by the legislative decrees implementing the delegated law 106/2016 have been issued. At the beginning of the XVIII Legislature, the schemes of the supplementary and corrective decrees of the Third Sector Code and the Decree of revision of the social enterprise were examined by the competent parliamentary committees. Of specific interest to the Third Sector, also the changes introduced to the Code by the so-called Tax Decree which, among other things, provided a new criterion for determining the commercial or non-commercial nature of Third Sector

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entities and intervened on the discipline for deductions provided for those who make liberal disbursements in favour of Third Sector entities.

It should also be noted the changes to the sector legislation introduced by the Simplification Decree which, after the increase provided for by the 2019 Budget Law, restored the IRES rate to 12% for Third Sector activities and included private law associations or foundations originating from the transformation of public assistance and charitable institutions (so-called "IRES" "ex IPAB") among the Entities of the Third Sector. Finally, given the measures put in place in the COVID-19 emergency period, the deadline by which non-profit organizations, voluntary organizations (ODV) and Associations of social promotion (ASP) must adapt their statutes to the provisions contained in the Third Sector Code has been postponed from 30 June to 31 March 2021. Within the same period, social enterprises may amend their statutes in the manner and majorities provided for the resolutions of the ordinary shareholders' meeting. Below some of the most salient points of the new reference legislation of Italian sport will be highlighted. Between 2 and 3 April 2021, indeed, the provisions that constitute the so-called "Reform of Sport" came into force. In fact, previously, on 18 and 19 March 2021, the decrees implementing articles 5, 6, 7, 8, 9 of the Delegated Law of 8 August 2019 no. 89 were published in the Official Gazette (no. 67 and 68). The Legislative Decrees are as follows:

- Legislative Decree no. 36 of 28 February 2021 "Reorganization and reform of the provisions on professional and amateur sports bodies as well as sports work";
- Legislative Decree no. 37 of 28 February 2021 "measures regarding the relationships of representation of athletes and sports clubs and access to and exercise of the profession of sports agent";
- Legislative Decree no. 38 of 28 February 2021 "measures regarding the reorganization and reform of safety rules for the construction and operation of sports facilities and legislation on the modernization or construction of sports facilities";
- Legislative Decree no. 39 of 28 February 2021 "simplification of obligations relating to sports bodies";
- Legislative Decree no. 40 of 28 February 2021 "safety measures in winter sports".

However, the approval of Legislative Decree no. 73 of 25 May 2021 "Decreto sostegni bis" has anticipated, in large part, in fact, the entry into force of the sports reform on 1 January 2023 compared to 31 December 2023, the date initially provided for by Legislative Decree no. 41 of 22 March 2021 "Support Decree". In particular, the legislative decrees concerning the work and form of amateur sports bodies anticipate the entry into force on 1 January 2023: Article 25 (Sports worker), 26 (Discipline of the sports employment relationship), 27 (Sports employment relationship in professional sectors), 28 (Race Director), 29 (Amateur sports performance), 30 (Training of young athletes), 32 (Health checks for sports workers), 33 (Safety of sports workers and minors), 34 (Accident insurance), 35 (Pension treatment), 36 (Tax treatment), 37

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(Coordinated and continuous collaboration relationships of an administrative-managerial nature). On 31 August 2022 (compared to the previous provision of 31 December 2023 of the Support Decree) the provisions of Legislative Decree no. 39 on simplifications (containing the important rules on how to register with the new National Register of amateur sports activities and on the purchase of the legal personality of amateur sports associations) will come into force, while on 1 January 2022 Legislative Decree no. 40 will come into force (containing the safety measures in winter sports). The reform therefore saves the entire current season (now closing) and most, if not all, of the 2021/2022 season. Specifically, the entry into force of all the aforementioned decrees with the exception of Decree 36 has been postponed to 31 December 2023.

The latter, in fact, will come into force in two stages. In fact, on 1 January 2022, the entry into force of all the provisions except those on sports work contained in Articles 25 to 37 remains unchanged. In order to summarize it can be concluded that the provisions relating to sports work run from 1 July 2022; all other provisions from 1 January 2022. What has just been said underlines, firstly, the acknowledgment, by the Government, of many critical issues of the reform expressed by all the subjects involved in the various hearings of the competent parliamentary committees and, secondly, the need to mitigate these critical issues with the desire not to definitively stall the reform itself, risking, inevitably, to nullify all the work done.

4. Legal form of sports bodies.

One of the main novelties of the Reform concerns, first of all, the choice of the legal form that sports bodies will be able to assume. Since, according to art. 6 of Legislative Decree no. 36/2021 "... sports bodies may take one of the following legal forms: a) sports association without legal personality governed by articles 36 et seq. of the Civil Code; b) sports association with legal personality under private law; c) companies referred to in Book V, Title V, of the Civil Code". The innovation of this provision is constituted by the fact that even for these entities the possibility of constituting themselves in all the corporate forms provided for in the title V book of the Civil Code is allowed, therefore sports clubs both of capital (as already currently envisaged) and of persons. Despite these openings, it is conceivable that most amateur sports associations will continue to maintain the forms of the association, with or without legal personality, due to the lower costs and (already high) costs and burdens of management and administration.

Among the critical issues and doubts raised by this article, the lack of foresight of the cooperative societies stands out. There is nothing in that regard to Article 6. Whether it is an oversight or an error, it will be better for the legislator to remedy it in a short time, because, to date, there are many sports cooperatives existing on our national sports scene. Article 7(7)(.b) of D.l.gs No 36, provides that the corporate

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purpose must provide for 'the stable and principal exercise of the organisation and management of amateur sports activities, including training, teaching, preparation and assistance for amateur sporting activity'. The reference to the stable and main activity must be read in conjunction with Article 9 below, according to which 'amateur sports associations and clubs may carry out activities other than the main ones referred to in Article 2(1)(b), provided that the articles of association or articles of association so permit and are secondary and instrumental to institutional activities, according to criteria and limits defined by decree of the Competent Government Authority in the field of sport, in agreement with the Minister for the Economy and Finance'. In summary, the main activity of amateur associations must, in fact, be the organization and management of amateur sports activities; while, the performance of secondary and instrumental activities will be allowed only in a subsidiary way respecting the criteria and limits established by a presidential decree, whose timing is difficult to predict. It is clear, therefore, that the financing of solidarity activities is delegated to the self-financing capacity of each sports club through membership fees for finding funds on the solidarity market. It should also be stated that the performance of secondary activities to support the institutional one is relevant in relation to covering the costs of general sporting activity. In fact, the latter, representing a rather high burden, is based on three pillars: membership fees and related specifications, the performance of secondary activities to support sports activity and sponsorships. Another point on which to focus attention is the new concept of non-profit. In fact, it has been reformulated through the provision that sports bodies with a corporate nature can distribute, partially, the profits and repay the share of capital paid.

5. Sports facilities.

Legislative Decree no. 38/2021 is entirely dedicated to the "Measures regarding the reorganization and reform of safety rules for the construction and operation of sports facilities and the legislation on the modernization or construction of sports facilities". Article 5, pillar of legislative decree in question, reads as follows: "Non-profit Sports Associations and Clubs may submit to the local authority, on whose territory the sports facility to be regenerated, redeveloped or modernized insists, a preliminary project accompanied by an economic and financial feasibility plan for regeneration, redevelopment and modernization and for subsequent management with the provision of a use aimed at promoting aggregation and inclusion social and youth". This is an attempt to reorganize the technical standards aimed at simplifying the administrative procedures for the construction and maintenance of sports facilities, including school facilities. The objectives of this forecast are:

1. ensure an effective redevelopment and modernization of sports facilities, especially in terms of accessibility, energy efficiency and safety;

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2. transform sports facilities into points of social and youth inclusion, perhaps with the birth of new sports realities that through this aggregation find their foundations.
Continuing with the reading of paragraph 2, it is established the gratuitousness of the assignment in the management of the facility to non-profit Sports Clubs and Associations if "the local authority recognizes the public interest of the project, directly entrusts the free management of the facility to the association or sports club for a duration proportionally corresponding to the value of the intervention and in any case not less than five years ". Therefore, if the modernization and redevelopment project is successful, the local authority entrusts the management of the facility itself free of charge to the Sports Authority, the use of which must be "open to all citizens and must be guaranteed, on the basis of objective criteria, to all sports clubs and associations".
Finally, it is established that "in cases where the territorial public body does not intend to directly manage the sports facilities, the management is entrusted preferentially to amateur sports clubs and associations, sports promotion bodies, associated sports disciplines and national sports federations, on the basis of agreements that establish the criteria for use and after determining general criteria and objectives for the identification of the entrusted subjects".

6. *The relationship with the Third Sector Code.*
Another important novelty that has emerged from the reform of sport concerns the possibility, for associations (ASD) or amateur sports clubs (SSD) to maintain or assume the status of Third Sector entity (ETS) or social enterprise. The sports reform, in fact, seems to want to grant sports associations and clubs a status like third sector bodies. In particular, art. 6, paragraph 2, of D.L.gs no. 36 provided that 'amateur sports bodies, if the conditions are met, may assume the status of third sector entities, pursuant to Article 5, paragraph 1, letter t), of Legislative Decree 3 July 2017, n. 117, and of social enterprise, pursuant to Article 2, paragraph 1, letter u), of Legislative Decree 3 July 2017, No 122. In such a case, the provisions of this Decree shall apply only in so far as they are compatible.'
This clearly entails several benefits that WILL benefit ASDs and SSDs including:
the decommercialization of the fees of the members and members referred to in art. 148 of the T.U.I.R.; the application of the flat-rate scheme pursuant to Law no. 389 of 1991 for commercial activity; the qualification ex lege as "advertising" of the expenses incurred by the sponsor for an annual amount not exceeding, overall, 200,000 euros;the possibility of applying art. 149 of the T.U.I.R. In addition to the benefits listed above, there are others specifically indicated by the reform: simplified procedures for the modernization and construction of sports facilities; facilitated procedure for the recognition of legal personality; preferential procedure for the use and management of sports facilities of local authorities. One also wonders what

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specific activities can be carried out by an ASD or SSD that is also an ETS or social enterprise.

In this sense, the choice of the double qualification is encouraging for those associations that promote multiple purposes such as amateur sports associations that also carry out music courses or services such as after-school activities. If sports associations wish to enter the Register of the Third Sector as entities that carry out social promotion, they must follow the rules to which the other associations are subject. In other words, amateur sports associations and clubs already registered in the CONI registers will have to make a choice: to remain sports or to become an association or society of social promotion registered in two registers. A clear question therefore arises: how convenient it is for these entities to register in the Register of the Third Sector and enter this system. Of course, much will depend on their ability to coordinate and find a mechanism of representation among themselves. The decree, in these situations, has introduced the constraint of the secondary nature of activities other than sports, not contemplating, specifically, a derogation for third sector entities with regard to activities other than sports that qualify as of general interest. Another question to pay attention to concerns the possibility, for ASD and SSD, to provide sports compensation.

The answer is affirmative, as this is not prohibited by the Third Sector Code. According to a doctrine, in fact, "the wording of Article 16 of the Third Sector Code is not considered an obstacle to recourse to such collaboration, where it provides that "workers of Third Sector entities have the right to an economic and regulatory treatment not lower than that provided for by the collective agreements referred to in Article 51 of Legislative Decree of 15 June 2015, No 81", since it is not conceivable that the same regulatory treatment of an employee as that accorded to a worker in a relationship of continuous coordinated collaboration, occasional autonomous collaboration or professional collaboration is conceivable. 'It is clear that a series of critical issues will arise for the ASD that will intend to cumulate the double qualification of sports body and the Third Sector.

First of all, the ASD and the SSD to be considered as such will have to carry out, primarily, the activity of organization and management of amateur sports activities, including training, teaching, preparation and assistance to sports activity, pursuant to art. 7 of D.l.gs No 36. The other activities can only be carried out secondarily within the limits established by the President of the Council of Ministers. It is clear, therefore, that the ASDs that will access the Third Sector will not be able to carry out the activities provided by it, except for sports. The definition of amateur sports activity in the Third Sector is still open.

In fact, it would seem that in the Third Sector the entities capable of carrying out the organization and management of amateur sports activities are only the ASD and the SSDs registered in the National Register of Amateur Sports Activities. In any case,

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there remains the need to circumscribe a precise regulatory framework to prevent sports bodies in the Third Sector from facing a non-homogeneous path. In conclusion, sport is an integral part of the Third Sector: the connection between the two worlds is realized through amateur sports associations and clubs.

7. Taxation of Third Sector Entities.

After the increase in the IRES rate for Third Sector entities that carry out non-commercial activities that achieve social purposes (increase provided for by the 2019 Budget Law - Article 1, paragraph 52, of Law 145/2018), the Simplification Decree (Article 1, paragraphs 8-bis and 8-ter of Decree-Law 135/2018) postponed the repeal of the reduction in half of the IRES for some Third Sector entities; this reduction is in fact no longer applied from 1 January 2019, but starting from the tax period of first application of further favourable measures (to be issued, with measures compatible with European Union law, against subjects who carry out activities with a social purpose). Therefore, the reduction to half of the IRES for those entities (to 12%) remains until those measures are enacting.

8. A brief overview to Europe. VAT in sport: European law.

Transactions that an entrepreneur carries out in Germany are subject to German VAT law. First and foremost, the Value Added Tax Act, but also the VAT Application Decree should be mentioned here. In the course of the design of the European internal market, there was a need to harmonise the turnover taxation of cross-border trade in goods and services. The so-called Value Added Tax System Directive (VAT Directive) is intended to contribute to this. The VAT Directive also contains important regulations for sports clubs. They deviate in part from German VAT law. If the European requirements are more favourable to the association than the German regulations, the association can rely on the higher-ranking European law.

Example: Individual lessons for athletes (e.B. golf, horseback riding, tennis, air sports)

A sports club employs a physical education teacher who gives individual lessons to members and non-members. According to German VAT law, this would only be tax-free if the fee is either a participation fee for a sporting event or a consideration for an event of an instructive nature of a non-profit organization (cf. § 4 No. 22 a) or b) UStG). The tax authorities are of the opinion that individual training is not a sporting event. According to German VAT law, the remuneration for individual lessons is therefore taxable. Under European law, transactions in respect of certain services closely linked to sport and physical education provided by non-profit-making entities to persons practising sport or physical education are exempt from tax (see Article 132(1) of the VAT Directive). The highest German tax court has confirmed that the individual lessons that a non-profit sports club provides to sports enthusiasts

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constitute such a service (see BFH, judgment of 02.03.2011, Az: XI R 21/09). As example the Provision of sports facilities to members and non-members should be mentioned. The situation is similar when sports facilities are made available to members or non-members for a fee. According to German tax law, they are subject to VAT. In the case of short-term rental to members, the income in the special purpose operation is taxable at 7 percent, in the case of transfer to non-members in the context of an economic business operation at 19 percent.

9. Conclusion.

Sports facilities are supported by some measures of favour of the tax legislator that recognizes tax breaks and exemptions for individual taxes that could affect these infrastructures. These benefits are particularly present at the local level considering that municipal taxation is mainly focused on the taxation of real estate. Consider, for example, the benefits granted under the Single Municipal Tax and the municipal tax on advertising that involve considerable tax savings for taxable persons to protect and promote the use of sports facilities. This protection of sports infrastructure is also reflected in detail at European level where, with the entry into force of the Treaty of Lisbon in December 2009, the European Union has acquired for the first time specific competence in the field of sport. Tax breaks based on VAT and exemptions from the field of State aid represent tangible interventions by the European institutions in favour of sports facilities. In order to clearly recognize the social function of sport and to promote, with the introduction of new and more effective tools, a territorial development of the facilities also for basic sports disciplines, a present proposal for a law of parliamentary initiative has recently been presented concerning the increase and maintenance of the sports facilities through state incentives and financial and tax benefits for companies and associations amateur sports. In conclusion, one can only hope for the prompt definition of a discipline that is very urgent and opportune.

Furthermore, sport is an important means of promoting positive social values, such as the ideal of team spirit or fair competition. It also leads to the integration of socially disadvantaged people (e.g. immigrants) into society. An example of this is the "Homeless World Cup", which took place in South Africa in September 2006. The social role of sport in the EU was particularly emphasised in the White Paper on the policy field "Sport" of the EU Commission (EU Commission 2007a). The White Paper aims to achieve a new accentuation of EU sport policy in order to increase the visibility of sport in EU policy and to sensitise the public to the needs and special features of the sport sector. The White Paper underlines the important social and economic role of sport while respecting EU law. The White Paper is the result of extensive consultations with sports organisations (e.g. Olympic Committees and sports federations), Member States and other stakeholders over the last two years, including an online consultation launched in February 2007.

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The White Paper proposes a detailed action plan with concrete measures, addressing in particular the social and economic aspects of sport, such as public health, education, social inclusion, volunteering, external relations and sport funding. The overall aim of the initiative is to clarify important issues such as the application of EU law in the field of sport and to specify further sport-related measures at EU level. Concrete proposals for further EU action are summarised in the action plan named after Pierre de Coubertin, which includes measures that should be implemented or supported by the Commission. Improved cooperation with member states is also proposed. So far, cooperation between Member States in the field of sport has taken place at EU level through informal ministerial meetings and at administrative level through meetings of the Directors of Sport. To this end, the EU Ministers of Sport set out in 2004 a rolling agenda of priority topics for discussion between Member States. To this end, the Commission proposes to expand the already existing cooperation between the Member States and the Commission (EU Commission 2007: 20).
The European Parliament has also been involved in sport policy activities. The European Parliament has closely followed the various challenges facing sport in Europe and has regularly addressed sport issues over the past years. The European Parliament considers that it is necessary for the European Union to address sport issues in strict compliance with the principle of subsidiarity and has therefore supported the inclusion of an explicit reference to sport in the Treaties (the Committee on Culture and Education is responsible for sport policy issues). The complex European sporting landscape with its multiple dimensions has overall points of contact with many EU policies and is confronted with new social and economic challenges. Therefore, any initiative to meet the expectations of sport stakeholders must be based on a new holistic policy approach, taking into account the underlying legal framework on the one hand and the need to respect sport autonomy and subsidiarity on the other.
+The basis for cooperation is the "open method of coordination" (OMC), which has already been used for the cooperation of the member states and the
EU in the areas of employment, education, youth and social protection - but also for innovation policy within the framework of the Lisbon Strategy. After the entry into force of the Lisbon Treaty, improved conditions for anchoring further sport policy initiatives of the European Commission will probably arise - analogous to the development that has already occurred in the field of culture. The anchoring of the "specific characteristics of sport" (ex-Art. 149 TEC) in the European treaties should make it possible for the European Union to take better account of this specificity in the future. Last but not least, it will be a question of the concrete design of a "sport" funding programme of the European Union.

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