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Giuseppe Egidio Iacovino, Carlo Rizzo

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The tax implications of the electronic sports phenomenon

di Laura Letizia

(Professoressa associata di Diritto tributario presso l'Università degli Studi della Campania "Luigi Vanvitelli")

Sommario

1. Introduction. – 2. No VAT exemption for sports without '*a significant physical component*': the decision of the Court of Justice. – 3. Taxation for VAT purposes of management activities of e-sports gaming platforms: the interpretation of Agenzia delle Entrate. – 3.1. For direct tax purpose. – 4. The tax treatment of cyber-athletes' earnings. – 4.1. The economic exploitation of image right and the case of e-athlete 'influencer'. – 5. Final remarks.

Abstract

Among the fields of application of the universe constructed through global communication networks is the one in which some individuals simulate, at a competitive and professional level, the performances that characterize traditional sports by replicating them digitally. There is, however, a lack of legal definitions and regulations of the ecosystem with consequent shortcomings on the tax enforcement front, whose rules adapt each time expressions of contributory capacity emerge.

Further problems arise regarding the identification of the most appropriate tax treatment of prizes and winnings from participation in e-sports tournaments, as they are played on digital platforms where traditional sports are reproduced. Such income, in fact, is subject to withholding tax only if paid in the context of events expressly provided for by the legislature and involving technical verifications by the competent administrations, which are currently not regulated.

In a broader view and with reference to the unstoppable development of artificial intelligence, especially in sports practiced at a high level, a question then arises that will have to be addressed: whether, in the not too distant future, a tax regulation dedicated to digital sports activities will have to be drawn up and whether, if need be, the classic income categories will have to be reformulated so as to intercept all expressions of wealth production not regulated in the current legal framework.

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1. Introduction.

In a gaming environment through virtual reality, players – by creating digital avatars and using Internet, electronic devices, consoles, viewers, sensors and expressly developed interfaces, as well as cloud gaming – can obtain rewards by carrying out transactions with currencies of the games themselves or present in the loot boxes. The latter allow gamers to receive additional content and redeem randomly selected virtual items for money (*pay-to-win*).

In addition, participants can obtain digital resources such as cryptocurrencies by transferring assets in exchanges through the exchange and sale of non-fungible tokens (NFT), referred to blockchain technology or other revenues, thus immobilizing crypto assets held in the crypto staking system and which are characterized by limited availability to guarantee their value (*digital scarcity's*). The crypto games, in fact, determine the certified possession of intangible objects and allow users to 'redeem' them by benefiting from the time spent on a title coming from a software house and distributed to them by paying or not paying a sum of money.

Among the various expressions of the digital dimension of games are e-sports[1], so broadly defined because they include both video games with a recreational purpose and simulated sports games that are inspired by real sports activities performed (also) at professional level.

In any case, the phenomenon is characterized by national and international online gaming events in which amateur or professional players challenge themselves in an organized approach to computer games[2]. Therefore, the e-gamers can be either casual players who purchase game content without receiving any monetary compensation in the event of winning, or professionals who, instead, can win significant prizes by participating in tournaments. Additionally, their earnings may come from sponsors who pay them compensation in kind (for example, hardware) or in money.

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[1] For further information on the concept, see WAGNER, M.G. (2006). "On the Scientific Relevance of eSports", in ARREYMBI, J., CLINCY, V.A. & DROEGEHORN, O. (eds.), *Proceedings of the 2006 International Conference on Internet Computing and Conference on Computer Game Development*, Las Vegas, NV, CSREA Press, pp. 477-472. The Autor specifies that it is an area of sporting activities in which people develop and train mental or physical abilities in the use of information and communication technologies. For a definition, see also HAMARI & J. SJÖBLOM, M. (2017). "What is eSports and why do people watch it"?, *Internet Research*, No. 27, pp. 221-223; CONI, A. (2017). "Reality is broken: videogaming as a new form of sport. The accession of esports", *Rivista di diritto ed economia dello sport*, No. 1, pp. 81-98; CONI, A. (2017). "Who owns the esports? The multiple creative factors of a digital work of intellect and the complex ways of globally applying the copyright law", *Rivista di diritto ed economia dello sport*, no. 3; HEERE, B. (2018). "Embracing the sportification of society: defining esports through a polymorphic view on sport", *Sport Management Review*, No. 1, pp. 21-24; ZAMBELLI, L. & STRINATI, A. (2021), "Analisi sistemica del fenomeno eSport. I video-games come sport e la necessità una governance", *federalismi.it*, No. 14, p. 204-221.

[2] WITKOWSKI, E., HUTCHINS, B. & CARTER, M. (2013). "E-sports on the Rise?: Critical Considerations on the Growth and Erosion of Organized Digital Gaming Competitions", *IE '13: Proceedings of the 9th Australasian Conference on Interactive Entertainment Matters of Life and Death*, ACM Press, Melbourne, p. 43.

ISSN 2036-7821

As regarding the tax effects for the first type of players are often irrelevant as they concern especially publishers, distributors, and payment service providers.
Again, as far as the dissemination of these games is concerned, one can use the Internet, not use it, or use both methods. More specifically, the competitions can be viewed by the interested public via electronic live streaming connection on special platforms and the cyber-athletes participate in them remotely. However, as for competitions lacking online connection, they take place in person, in physical places and in front of a real audience. Finally, competitions can take place in mixed mode; in this case, the characteristic is that the players participate in person, and at the same time, they are disseminated to interested parties through gaming platforms that transmit them both in deferred and in real time.
In each case, e-game are multiplayer and are expressed of competitive circuits, leagues, tournaments, and further modes, that allow e-athletes, also represented by teams, to earn points. The latter, through a ranking system, often take the form of cash prizes.
If the services in question are provided, for the most part, in an automated manner, registration for e-sports competitions requires specific in-game currencies, usually fungible. Furthermore, the related transactions do not take place neither through traditional means of payment, nor through brokers.
The profits can therefore be made from the use of these tokens, so much so that the ecosystem is configured as a business, which involves – in addition to e-players endowed, if they are professionals, with technical and physical skills – many other participants (gaming platform operators, fans, analysts, sponsors, etc.).

2. No VAT exemption for sports without a 'significant physical component': the decision of the Court of Justice.

The Italian legal system lacks a specific and, therefore, fiscal regulation for the sector in question and the presence of its regulation is also lacking at a European level.
Considering the jurisprudential rulings, it seems interesting to consider a question addressed by the Court of Justice which, since the 1970s, has had a fundamental importance in identifying what can be considered a sporting activity.
Reference under consideration relates to the case of English Bridge Union Limited (EBU) v Commissioners for Her Majesty Revenue & Custom concerning a request for a preliminary ruling under article 267 TFEU. This is, in fact, a case that can be compared to performances in e-sports[3].
In detail, the Taxation and Chancery Chamber of the Upper Tribunal (Fourth Chamber) had asked the supranational Court the correct interpretation of article

[3] For an analysis of the decision, see ABANAZIR, C. (2019). "E-sport and the EU: the view from the English Bridge Union", *The International Sports Law Journal*, No. 3-4, pp. 102-113.

ISSN 2036-7821

132(1)(m) of Council Directive 2006/112/EC on the Common System of VAT in relation to the taxation or non-taxation of entry fees collected by EBU which organized duplicate bridge tournaments.
This non-profit association, in fact, believed that the tax authorities of the United Kingdom should refund the VAT paid by the participants in the tournaments with respect to the related registration fees as they were exempt as it was a service 'closely linked to sport and physical activity'.
In essence, the participation in question had to be classified as a sporting activity, even if it lacked a 'significant component' of physical activity. The association considered its activity to be covered by the Article 132 cit., since the objective pursued by the European legislator in the outlining it was to promote 'any' activity that would bring 'benefits' to the physical and/or mental health of persons who regularly practiced it. Accordingly, even the intellectual and competitive activity of bridge assumed a 'relevance' comparable for tax purposes to that of a traditionally understood physical activity and was to be considered a sport.
The Tax Authorities, on the contrary, and by virtue of the literal wording of the precept, considered that a physical activity implied 'a predominant physical component'. On the other hand, EBU had already appealed to the Chamber of Tribunals, which had rejected the request for tax exemption.
The Luxembourg Court, in deciding, recalled its previous rulings on the matter and reiterated the need to respect the purpose and structure of the Sixth Directive and its ratio legis. Therefore, the term sport must be understood considering the purposes of the tax exemptions provided for by the Directive provided for in Chapter 2 of Title IX in favor of certain activities of public interest.
The provision is therefore aimed at the practice of sport and physical education in general and, therefore, at any sporting activity, if it is mainly intended for recreational purposes, intending to encourage certain activities of general interest and, that is, certain services of general interest immediately connected to the practice of sport or physical education carried out by collective non-profit organizations. All with the aim of promoting them among large sections of the population.
An interpretation that restricted the scope of application of the VAT exemption only to sporting activities practiced in an organized, systematic, and competition-oriented manner would, therefore, be contrary to the objective pursued by the European legislator.
The Court, however, did not recognize bridge tournaments as sporting activities because they do not fall within the usual notion of sport and noted, rather, that the VAT Directive contains no definition in this regard. Therefore, the notion of sport must be deduced based on its jurisprudence and on the meaning that the term ordinarily assumes.

ISSN 2036-7821

The applications of tax exemptions regarding VAT must therefore receive a restrictive interpretation and, for an activity to be 'sport' it must be characterized by a 'not insignificant physical component's where the 'mental effort' – for tax purposes – 'assumes no relevance'.
Despite this, the supranational judge offers another solution favorable to the taxpayer and believes that the 'cultural component' of the duplicate bridge can be considered compliant with Article 132, highlighting the fact that, at a territorial level, an autonomous definition of sport could be detailed.
From here, the card game subjected to his examination can well be included among the 'cultural services' for which, as happens for certain transfers of goods by public bodies or cultural organizations recognized by a Member State, the VAT exemption is permitted.

3. Taxation for VAT purposes of the management activities of e-sports gaming platforms: the interpretation of Agenzia delle Entrate.

Observing the VAT exemption regime contained in Article 10, paragraph 1, No. 6[4], of the Decree of the President of the Republic no. 633/1972 and with reference to the management of e-gaming platforms, it appears interesting to consider a recent response given by the Italian Financial Administration following a request for inquiry from a company[5].
In fact, the Revenue Agency here clarified the intervention of the normative provision against a company which, through an app, operated in the sector of the conception, development, production, and marketing of an online platform dedicated to e-sports which was 'open to everyone'. Specifically, the match-making activity carried out consisted of organizing competitions in virtual locations in which competitors located both in Italy and abroad participated, upon payment of a fee in 'betacoin' worth EUR 1 each and so called for marketing reasons only.
They were, in fact, simple tokens, not cryptocurrencies or crypto assets; furthermore, they were not subject to expiry or change in value, but allowed users who had won tournaments and obtained prizes to reuse them exclusively on the digital platform, after deducting a pre-established percentage for the operator's activity, or to redeem and convert them in EUR.

[4] The rule provides for the exemption from VAT of transactions relating to the operation of the lotto, national lotteries, games of skill and betting contests reserved to the State and to specific entities (indicated in Legislative Decree No. 496/1948 and subsequent amendments), as well as those relating to the operation of totalizations and betting transactions (as definite in Regulations approved by the Decree of the Minister for Agriculture and Forestry of 16 November 1955 and Law No. 315/1942 of 24 March 1942 and subsequent amendments), including transactions relating to the collection of bets.

[5] Agenzia delle Entrate, reply of 7 December 2022, No. 582.

ISSN 2036-7821

Essentially, players were barred from sublicensing, trading, selling, or attempting to sell 'betacoins' to other parties in exchange for money. Furthermore, these tokens flowed directly into the player's wallets net of the commission charged by the intermediary.
Ultimately, the issue in question was not "real", as the tokens circulated in a basically unlimited number and did not expire, did not constitute a blockchain and the referable exchange rate was not fluctuating.
On this basis, the company operating the gaming platform asked the Agenzia delle Entrate for the (accounting and) tax qualification of income from its matchmaking activity limited to providing a virtual meeting place for e-sportsmen where they could aspire to win 'betacoin' prizes.
More specifically, the applicant requested to know the VAT regime applicable to the services it rendered to private users' resident in Italy, in the EU or outside the EU, the respective treatment with regard Corporate Income Tax (IRES) and Regional Tax on Productive Activities (IRAP), as well as the correct identification of the 'moment' of taxation. All this on the assumption that the supply to e-player of tokens, against payment of sums of money, was comparable to that of vouchers following EU Directive 2016/1065, transposed in Italy by Legislative Decree No. 148/2018, and Articles 6-bis to 6-quater and 13(5-bis) of VAT Decree[6].
The applicant hence considered that the tokens were to be regarded as 'instruments' conferring on their holders the right to use specific goods and/or services ('coupon vouchers'), with consequent tax relevance at the time of use, i.e. at the time of the transfer of the money for their purchase for the purpose of participation in electronic gaming tournaments.
In this regard, the company pointed out, inter alia, that Article 7-ter of the VAT Decree applied to the services of organizing competitions and that tax documentation had to be issued to each user of the gaming platform.
In providing its opinion, Agenzia delle Entrate referred to Article 30a ('Chapter 5 – Provisions common to Chapters 1 and 30') of Council Directive 2006/112/EC on the Common System of Value Added Tax. The rule specifies that voucher means (1) 'an instrument containing an obligation to accept as consideration or part consideration for a transfer of goods or a supply of services and where the goods or services to be

[6] In our system, in the absence of general rules and criteria, guidance to operators has been provided by the Agenzia delle Entrate which over time have intervened on the use of vouchers in commercial transactions. It has distinguished between securities representing goods and services pursuant to Article 1996 of the Civil Code and documents of legitimation pursuant to Article 2002 of the same Code. In the first case, the voucher can be configured as an 'advance payment' embedded in goods or services identified from the outset and, therefore, subject to VAT at the time of its issue. In the second case, on the other hand, the circulation of the voucher does not lead to the anticipation of the supply of the good or service to which it entitles and, for VAT purposes, only becomes relevant when used. Otherwise, it is merely a 'document of legitimation'. See Agenzia delle Entrate, Resolution 21/E/2011.

ISSN 2036-7821

transferred or supplied or the identity of the potential suppliers are indicated on the instrument'.

However, the Tax Authorities noted that the token in question 'did not state the goods or services to be sold or supplied, nor the identity of the potential sellers or suppliers'; therefore, it did not incorporate the obligation to be accepted as consideration for the specific supply of goods or services under consideration[7]. In other words, simply holding coins in his personal wallet did not give the user the right to participate in a remote sporting event and/or receive services, but only to use them as a means of payment, in the same way as ordinary currency, even though they were only 'spendable' only on specific gaming platform. Furthermore, the service of conversion into euros was not relevant from the point of view of the application of VAT, as it was carried out free of charge and managed by an intermediary.

What took on importance, rather, was the fee amount owed by the e-player to the gaming platform management company as remuneration for the service rendered at the time of his registration for the tournament.

After making these clarifications, the Administration also pointed out that it was not clear to it whether the company had complied with Article 7(1) of EU Implementing Regulation No. 282/2011[8] for the performance of its services, i.e. whether the service rendered was carried out through the Internet or an electronic network and, therefore, whether it was 'essentially automated' with 'minimal human intervention' or 'more than minimal' because it could be performed without the support of technology.

In any event, if the match-making activity was to be considered 'electronic', the territoriality for VAT purposes was governed by Article 7-octies of Presidential Decree No. 600/1973.

If, on the other hand, it was a 'generic' supply of services, it was territorially relevant in Italy under The Article 7-ter of the VAT Decree regardless of the tax residence of the electronic players.

More specifically, the first case allows the application of the One-Stop Shop (OSS) Regime[9], governed by Article 74-sexies of the Presidential Decree cited above.

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[7] Circumstance that, in truth, the Administration had already clarified in its answers to questions Nos. 519/2019, 562 and 617 of 2020 and Nos 147, 338, 512 and 523 of 2021.

[8] Implementation provisions of Directive 2006/112/EC on the Common VAT System.

[9] The regime, together with the Import One Stop Shop (IOSS) Regime, has introduced a European VAT payment system, both centralized and digital, also incorporating the services managed through MOSS, in implementation of the VAT E-Commerce Package, referred to in Directive (EU) 2019/1995 and Implementing Regulation (EU) 2019/2026 as priorities of the Digital Single Market Strategic, and pillar of the global VAT reform presented in 2016 by the Commission in the VAT Action Plan. The entry into force, initially scheduled for 1 January 2021 (EU Directive 2455/2017), has been postponed to 1 July 2021 (European Decision 2020/1109; Regulations 2020/1108, 201109 and 2020/1112) due to the emergency caused by the pandemic.

ISSN 2036-7821

In this case, in fact, VAT taxable persons domiciled in Italy or resident here and who have not established their domicile abroad, in addition to having been identified in our State, may opt for the application of the same rule and of the provisions of Article 74-quinquies for the purposes of discharging their VAT obligations. This is the case for all services rendered in other Member States to non-taxpaying clients. Therefore, from a procedural point of view, the provisions of paragraph 2 of article 74-quinquies apply, according to which the subjects who make use of the regime provided for by the same law are exempt from the obligations established by Title II. In case of issuing an invoice, the articles apply Art. 21 et seq.

It follows that the consideration received by Italian final users are subject to domestic VAT, the ordinary rate applies (22 percent) and documentation with invoice is required[10].

When they are registering on the gaming platform and activating the user profile, it is also necessary to acquire the customer's tax code, as mandatory data to be stated on the invoice.

As regard final consumers' receipts in the EU, these are subject to VAT taxation according to the rules of the customer's state (through the OSS System, if chosen), but are not subject to certification, unless it is the supplier's choice and, in any case, prior authorization is required from the client.

Finally, consideration received by non-EU final consumers is outside the scope of VAT and therefore not affected by the certification requirement.

In the second case indicated, the OSS regime is not applicable. The gaming platform manager must subject the fees collected to the ordinary VAT rate and fulfill the invoice obligation to certify them. When registering on the platform with activation of the user profile, the manager will (also) acquire the customer's tax code, since it is necessary to comply with Article 1(3), of Legislative Decree No. 127/2015[11].

The Revenue Agency also points out that to rationalize the invoicing and registration process concerning the transfers of goods and services carried out between subject's resident or established in Italy, as well as the related variations, it provides for the sole possibility of issuing electronic invoices through Sistema di Interscambio (SdI).

Furthermore, electronic invoices issued to end consumers are made available to them, upon request, by Agenzia delle Entrate's telematic services, while a copy is made available by the subject who issues it.

The obligation indicated does not exist, however, using SdI if the invoice is intended for non-residents. However, Article 1(3-bis) of Legislative Decree No. 127 cit.

[10] Articles 21 and 21-*bis* of the VAT Decree.

[11] In fact, starting from the '2008 Financial Law', invoicing towards Public Administrations is only in electronic form through the indicated system and Revenue Agency is the manager. Subsequently, the Ministerial Decree No. 55 of 3 April 2013 established the rules regarding the issuing, transmission, and receipt of electronic invoices, as well as the operating methods.

ISSN 2036-7821

provides that 'taxpayers [...] shall transmit electronically [...] the data relating to transactions involving the supply of goods and services made and received to and from persons not established in the territory of the State, with the exception of those for which a customs invoice has been issued, and those for which an electronic invoice has been issued or received in the manner indicated in Paragraph 3 [...]'.
Ultimately, the company will have to issue an ordinary invoice (paper or electronic) to non-resident customers.

3.1. For direct tax purpose.

Turning to the analysis of the corporate income tax (IRES) profiles, in the answer in question, the tax authorities considered that the conversion of user deposits into 'betacoins' constituted a mere financial event. Instead, the commissions charged by the gaming company, as it was a micro-business, were to be understood as revenue within the meaning of Article 85 of the Testo Unico delle Imposte sul Reddito (TUIR). Therefore, they concurred in determining the taxable base for IRES with the intervention of the criterion of Article 109(2)(b) of the TUIR, i.e. the taxable moment of services must be identified at the time of their conclusion.
The commissions are also affected by the regional tax on productive activities (IRAP), contributing to the net production value of the platform company. They are, in fact, revenues attributable to the activity carried out.
Finally, in relation to the obligations of the withholding agent deriving from the achievement of the prizes and winnings, the withholdings envisaged are applied if the conditions indicated in the Art. 30 of Presidential Decree n. 600/1973 and unless they are provided on an 'event' provided for by the same regulation. This is based on Articles 67(1), letter d, and 68 of the TUIR which regulate capital gains.
The application of these rules presupposes the qualification of the 'event' in which the prizes and winnings are paid, as well as the nature of the organizing body; therefore, the Revenue Agency does not provide a clarification in this regard as these are technical assessments within the competence of the Ministry of Business and Made in Italy and the Customs and Monopolies Agency[12].

4. The tax treatment of cyber-athletes' earnings.

A further aspect of interest of competitive e-gaming for tax purposes concerns – as anticipated – the proceeds that remote athletes can receive, also by joining teams, for the favorable outcome of their performances in tournaments, championships, leagues, and other broadcast competitions streamed and viewed by followers. This, in fact, generates "traffic" and generates "revenue" in relation to the "views" obtained based on sponsorship or advertising contracts, as well as for the economic

[12] See Agenzia delle Entrate, Circulars 9/E/2016 and 31/E/2020.

ISSN 2036-7821

exploitation of image rights. Therefore, in this case there is no doubt that the income profiles have a preponderant character compared to the ludic and recreational element.

It has also been expressed that in the Italian legal system (and in that of the European Union) there is no classification of the phenomenon and, even less so, for tax purposes in relation to the compensation received from these taxpayers for the services performed in the context even with regarding a possible reference team. It is therefore necessary and necessary to take into account the income categories outlined in the TUIR for the purposes of the personal income tax (IRPEF) and, in this case, the income from subordinate work (art. 49), if the services in question are carried out employed and under the direction of an employer, or income assimilated to that of employed work (art. 50, paragraph 1, letter c-bis), if the same are carried out on the basis of a coordinated and continuous collaboration relationship.

With reference then to the income that e-gamer can earn, regardless of belonging to a team – such as, for example, those obtained directly from streaming platforms to broadcast the competitions in which they participate or by virtue of having stipulated sponsorship or merchandising contracts – it is necessary to distinguish between income from self-employment (Article 53 TUIR)[13] in the event that the services are rendered for a "habitual profession", even if not exclusive, derive from occasional self-employment contracts or from the assumption of obligations to do, not to do, allow (Article 67, paragraph 1, letter l, TUIR)

Furthermore, in relation to winnings resulting from tournaments, leagues and championships, the relevant qualification as "different income" (art. 67, letter d, TUIR) must be kept in mind, if they do not constitute capital income or derive from the exercise of arts, professions, and commercial enterprises.

The provision, in fact, includes in this income category, in addition to winnings from lotteries, prize competitions, games and bets organized for the public, prizes deriving from tests of skill, luck or awarded for 'particular' artistic, scientific, and social merits, with consequent withholding tax of 20 percent[14].

Winnings from skill tests, therefore, include the proceeds derived from participating in e-gaming competitions and a gamer who, without a subordination constraint and a specific organization, performs them sporadically, does not necessarily have to have a VAT number, but must indicate in the tax return the prize money received during the tax period (Article 69, paragraph 1, TUIR)[15]. On the gross winnings, the

[13] To invoice the proceeds, the VAT number is required. Furthermore, the ATECO codes must be indicated (82.99.99, 73.11.02 or 63.12.00). For IRPEF purposes, there will be progressiveness in relation to income and the withholding tax as an advance payment will be 20 percent, unless the requirements for the intervention of the flat-rate regime are met.

[14] Art. 30, Presidential Decree No. 600/1973.

[15] Specifically, in part D of the '730 Form' or in part RL of the 'Natural Person Incomes Form'.

ISSN 2036-7821

player will then apply the IRPEF rate relating to the income bracket in which the amount obtained falls.
Conversely, if the e-gamer is a professional, the proceeds deriving from the winnings in the competitions in which he took part must be classified as deriving from habitual work services and, therefore, carried out based on an employment contract or coordinated and continuous collaboration.
Furthermore, an e-athlete may be, as reported, self-employed and, furthermore, the platforms on which he plays the online game may not be in our State; therefore, this income comes from a foreign source. This taxpayer, in fact, by connecting to a platform, participates remotely in the competitions, so that the place of identification for tax purposes about the territorial connection is that of the state of residence of the paying party. However, if the game is offline, the income that the subject has received is subject to taxation in the State in which the performance was carried out, i.e. where performed 'in presence'[16].
From the tax residence, following the criteria indicated in reformulated Article 2 TUIR[17], the well-known principle indicated in the following rule intervenes; thus, the cyber-athlete for IRPEF purposes will declare in our State all income received, wherever earned, regardless of where it is realized. On the contrary, a professional electronic athlete who is a non-resident self-employed worker will be taxed in Italy according to what is indicated in the Article 23 TUIR for IRPEF: taxation will take place in the State of the source of income.
Another hypothesis is that in which this taxpayer carries out his service in a State that has signed an agreement against double taxation with Italy based on the OECD Model. It follows that the income he has earned is taxed in Italy if he resides or is domiciled here, as well as in the presence of a permanent establishment[18].

[16] See TENORE, M. (2021). "E-sport: l'applicazione dell'articolo 17 Modello OCSE ai redditi conseguiti dagli e-gamer", *Rivista telematica di diritto tributario*, No. 1, p. 625-631.

[17] Article 1 of Legislative Decree No. 209 of 27.12.2023 provides that, for income tax purposes, persons are deemed to be resident if they have their domicile or residence in the territory of the State for most of the tax period, including fractions of a day, or are present there. Therefore, the connecting criterion for determining the tax residence of natural persons has been modified, replacing the notion of domicile in the Civil Code with a substantive criterion, and it is to be understood as the place where the taxpayer's personal and family relationships are primarily developed. On the other hand, the criterion whereby persons registered for most of the tax period (183 days) in the resident population registers are presumed to be resident has remained unchanged, but the presumption in question is relative. In any case, the reported requirements must be met for most of the tax period, including fractions of a day.

[18] On the now outdated traditional concept of permanent establishment, see Carpentieri, L , Lupi, R. & Stevanato, D. (2003). Il diritto tributario nei rapporti internazionali, Il sole 24 ore, Milan. Also on the topic, see Cipollina, S. (2014). "I redditi nomadi delle società multinazionali nell'economia globalizzata", Rivista di diritto finanziario e scienza delle finanze, no. 3, pp. 21-63; Carpentieri, L. (2020). Profili fiscali dell'economia digitale, Giappichelli, Torino; Letizia, L. (2021). "Prospettive di tassazione post-pandemia: il caso dell'imposta sui servizi digitali", in Rotondo, G. & Rispoli Farina, M. (Eds.). Il diritto dell'economia tra contesto emergenziale e nuovi paradigmi regolatori, Tab ed., Rome, pp. 241-260. On the reference to the OECD Model, see Tetlak, K. (2010). "Tax

ISSN 2036-7821

Of the OECD Model it is also necessary to keep in mind Article 17 which regulates in paragraph 1 the income of athletes and, more broadly, of all those who carry out artistic activities. The article provides, in fact, that if a resident of one State carries out sporting (or artistic) performances, even occasional, in another, under the self-employed or employed regime, the income derived can be taxed in that other State. The rule intervenes, based on the wording of paragraph 2 also if the income in question is in favor of a company representing the athlete (or artist)[19].

For the purposes of interest, paragraph 6 clarifies that the taxation also applies to income obtained following the exercise of disciplines which, although different from traditional sports, as they lack strictly athletic performances, still have an entertainment component. Therefore, gamers could fall within the scope of the rule.

In any case, the e-sportsman, if he is self-employed, must have a VAT number and invoice, in addition to the proceeds deriving from winnings of tournaments, leagues and championships, the compensation deriving from any promotional activity. Furthermore, he will be able to apply the flat-rate regime for determining income or the simplified accounting regime[20] to what he has received if the conditions are met.

In the first case, the taxation on the amounts received is 5 percent and then becomes 15 percent from the sixth year of the activity, with the intervention of a tax replacing IRPEF (and IRAP).

In the second case, the income is determined through a regime that provides only for the keeping of VAT registers and the exemption from any other obligation, except for

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Treatment of Team Performances under art. 17 of the OECD Model Convention", World Tax Journal, no. 3, pp. 269 -290; Molenaar, D. (2015). "OECD - Entertainers and Sportspersons Following the Updated OECD Model 2014", Bulletin for International Taxation, no. 1, p. 37 et seq.; Sasseville, J. (2016). "The 2014 Changes to Article 17 of the OECD Model Tax Convention", in Maisto, G. (Ed.), Taxation of Entertainers and Sportspersons Performing Abroad, IBDF, Amsterdam, pp. 85-100; Fransoni, G. (2016). "La tassazione degli sportivi e degli artisti nelle convenzioni internazionali", Rivista di diritto tributario, No. 2, pp. 175-184; Saporito, G. (2019), La tassazione degli artisti e degli sportivi. Ordinamento nazionale, libertà comunitarie e convenzioni internazionali contro le doppie imposizioni, Aracne, Rome, p. 77 et seq.

[19] Think of the Star Companies, sometimes used to reduce the tax burden of those who perform the services. On the topic, see DÈ CAPITANI DI VIMERCATE, P. (2015). "Le Star Companies", *Diritto e pratica tributaria internazionale*, no. 4, pp. 1089-1106; SAPORITO, G. & LUPI, R. (2015). "Cessione dell'immagine artistica tra tax planning ed evasione tributaria, *Dialoghi tributari*, p. 305 et seq.; RANDAZZO, F. (2016). "Il trattamento fiscale delle remunerazioni indirette agli atleti, con particolare riferimento ai casi di interposizione di terzo", in UCKMAR, V. (Ed.), *Lo sport e il Fisco*, CEDAM, Padova, pp. 308-315.

[20] This is the regime introduced by Article 1, paragraphs 58 to 89, Law No. 190/2014, intended for taxpayers who are natural persons engaged in business, arts, and professions on an individual basis. To access it, the subject must verify with reference to the previous tax period that he/she has not earned revenues or remuneration received, on an annual basis (and in the case of the start of activity during the year), in excess of EUR 85,000 and that he/she has not incurred expenses for a total amount exceeding EUR 20,000 if he/she has employees/collaborators. The 'Budget Law 2023' subsequently modified the income ceiling, allowing those who, during 2022, had exceeded EUR 65,000 and should have applied the ordinary VAT regime, to maintain the flat-rate regime. Occasional remuneration qualified as miscellaneous income pursuant to Article 67(1)(i) to (l) of the Consolidated Income Tax Act is not to be considered in the calculation of the ceiling.

ISSN 2036-7821

those relating to electronic invoicing and the Synthetic Indices of Fiscal Reliability (ISA).
The progressive IRPEF rates in relation to income brackets are nevertheless applied to the income and the taxpayer can deduct eventual costs sustained if they are inherent and congruent to his activity.

4.1. The tax treatment of the economic use of image rights and the case of an e-athlete 'influencer'.

With regards to the earnings that an electronic sportsman can obtain and with reference to the related tax treatment, the case in which he cedes the economic exploitation of his image rights to third parties as a testimonial for brands and/or products appears significant[21].
Consider, for example, this taxpayer's participation in photo shoots.
In this regard, the Revenue Agency pointed out in a recent answer to an interpellation request that if the testimonial is not resident in our State and the company marketing his image does not have a permanent establishment here, the consequent profits can be classified as self-employment income.
Accordingly, the application rules will be those set forth in art. 54(1-quater) of TUIR.
In fact, although it is an activity that is 'not strictly' referable to one carried out as a 'habitual occupation', is nevertheless referable to the same since the earnings derived imply the performance of a service linked to a professional or artistic context, referable to the 'fame' achieved by the person receiving them.
Specifically, remuneration received by taxpayer falls under the category of self-employment income which includes income derived from the sale of clients or the transfer of intangible assets related to the professional or artistic activity. In this regard, article 23(1)(d) of TUIR provides that income belonging to the category if paid to non-residents for services rendered in Italy, even in a non-habitual manner, is taxed in Italy and is subject to a withholding tax at source (30 percent)[22].
According to the Revenue Agency, the territorial criterion is also relevant for remuneration related to the exploitation of image rights since this is an 'intangible element' intimately connected to the professional activity. Income deriving from the transfer of such rights is therefore assimilated to self-employment income if the activity is carried out as a regular occupation within the meaning of Article 53(1)(a) of Presidential Decree No. 917/1986. In addition, this income is subject to

[21] On the economic exploitation of image rights related to sport, see CARINCI, A. (2016). "Profili fiscali dello sfruttamento del diritto all'immagine degli sportivi", *Rivista trimestrale di diritto tributario*, No. 2, pp. 329 -312; BIZIOLI, G. & MOLOGNI, F. (2021). "Profili convenzionali dei redditi da sfruttamento dei diritti di immagine", *Corriere tributario,* No. 5, pp. 455 et seq.; LETIZIA, L (2023), *La tassazione delle attività sportive dilettantistiche*, Giappichelli, Turin, pp. 160-163.

[22] Article 25, paragraph 2, Presidential Decree no. 600/1973.

ISSN 2036-7821

withholding tax, with the possibility of reimbursement if paid by withholding agents[23].

A further profile of the activities under scrutiny concerns, among many, the role of influencers that high-level virtual players can take on thanks to the notoriety acquired through broadcast competitions. Moreover, they may have at their disposal additional platforms or their own interaction channels (chat, instant messaging, etc.) to interact with their followers who, in turn, pay virtual currencies for this purpose or make donations to support them.

To expand observations on the ecosystem, it should be noted that its main source of revenue is due to the promo-advertising factor. Specifically, in-game advertising introduces 'appealing' elements directly into the gaming experience (banners on the sidelines, avatars competing wearing brands, etc.), while advergaming, which takes the form of various types, determines the total correspondence between interactive and advertising activities.

5. Final remarks.

The use and development of digital technologies and artificial intelligence express and will gradually express unprecedented manifestations of wealth of interest for tax matters determined by the production of new forms of value creation[24].

However, the platform economy does not necessarily imply the introduction of new tax rules with respect to the new phenomena, as some of its expressions only need to be adapted[25], although several questions arise as to 'how' to ensure greater equity in the tax system[26].

The ecosystem of virtual sports is not exempt from these considerations and, along with that of video games, was the subject of a recent European Parliament Resolution[27].

The institution, among other 'having regard' emphasized the need to arrive at harmonized data, definitions and legal frameworks to allow for the full exploitation of the sector's potential, determined by the presence of numerous actors and different production locations in the value chain managed, for the most part, by no-EU

[23] Ex Article 23 of Presidential Decree No. 600.

[24] On the topic, see BEKER, J. & ENGLISH, J (2019). "Taxing where value is created: wrath's users involvement got to do with it?", *Intertax*, no. 47, p. 162 et seq.; ELLIFFE, C. (2022). "The brave (and uncertain) new world of international taxation under the 2020s compromise", in *World Tax Journal*, no. 5, p. 238 et seq.

[25] In this regard, see GIOVANNINI, A. (2017). "Legalità ed equità per un nuovo sistema impositivo", *Diritto e pratica tributaria,* no. 6, p. 2335 et seq.; MARELLO, E. (2024). "La digitalizzazione del sistema tributario", *Rivista di diritto tributario*, no. 1, p. 1 et seq.; RAGUCCI, G. (2023). "Introduzione e norme ordinate sul fisco digitale", in RAGUCCI, G. (Ed.). *Fisco digitale. Cripto-attività, protezione dei dati, controlli algoritmici*, Giappichelli, Turin, p.1 et seq.

[26] GALLO, F. (2022). "Quale tassazione per l'economia digitale?", in GALLO, F. & URICCHIO, A.F., *La tassazione dell'economia digitale tra imposta sui servizi digitali, global miinimum tax e nuovi modelli di prelievo*, Cacucci, Bari, p. 13 et seq.

[27] Resolution of 10 November 2022 on esports and video games (2022/2027(INI)).

ISSN 2036-7821

platforms that also act as intermediaries, as well as its possible encapsulation within the culture and media sphere. It was also pointed out that esports should be understood as an entertainment activity, while providing students with transversal skills and creative thinking for educational purposes, as well as being practiced by professionals and teams.

Consequently, the phenomenon needs 'protections' to address the problems of manipulation of sports results, illegal gambling, performance enhancement and doping.

About the development of virtual sports, Member States must encourage it by granting incentives and economic support, also at local level, considering the provisions of State Aid legislation.

Think of the General Block Exemption Regulation[28] or the De Minimis Regulation, even if these do not expressly address the sporting context.

On these assumptions, the European level proposes to adopt a responsible approach to activities in the area and to promote them as part of a healthy lifestyle, determined by the physical activity they entail, and as they enable social interaction between people who, in various capacities, participate in them, as well as requiring a cultural commitment. The sector's potential in exploring new forms of fan engagement and increasing young people's participation in physical activities is also recognized, although it is still an ecosystem to be considered as a social activity allowing users to spend time together.

Indeed, on closer analysis, e-sports performances are not particularly different from those practiced in traditional physical sports disciplines. In fact, they too express 'values', act as vectors of social integration and cohesion, represent relational, cultural, educational, and training elements that stand in 'support' individuals and communities. Therefore, e-sports should not be considered simply as recreational and entertainment activities.

On the other hand, our legal system with Legislative Decree No. 36/2021, introduced in implementation of Article 5 of Law No. 86/2019 titled 'Reorganisation and reform of the provisions on professional and amateur sports bodies, as well as on sports work', identified sport as 'any form of physical activity based on compliance with rules''[29].

Consequently, the question is why even those who practice e-sports at a non-professional level cannot benefit from the favorable tax regime provided for those who practice traditional sports activities recognized by their respective federations.

[28] Respectively Nos. 651/2014/EU and 1407/2013/EU,

[29] Article 2.

ISSN 2036-7821

For the latter, in fact, the legislator provides for IRPEF purposes that income from performances performed is tax-free if it falls within the threshold of EUR 15,000 per year and if it is performed for non-profit sports bodies[30].
Taxation, therefore, also in this case, would be geared towards non-fiscal purposes and would take on a more specifically social dimension by showing the 'subsidiary' referred to in the Article 53 of the Constitution[31]. In this way, tax rules dedicated to this sphere could be contemplated, with exact delimitation, in application of interventions justified by purposes other than the interest of individuals in the life and action of public entities[32].
However – as stated above – e-sport activities, whether exercised professionally or not, have not yet been identified, with a few exceptions, nor let alone defined by the legislator, with consequent implications in terms of fiscal effects.
In fact, the proposal of Law No. 688, presented in the Chamber of Deputies last year containing 'Discipline of electronic or virtual sports (e-sports) and related professional and economic activities', preceded by another in 2022 (Law No. 3626), did not become law.
For interest purposes, the Article 31 of the bill provided for a tax on e-sports competitions determined at a rate equal to 10 percent of the amount corresponding to the gross income from registration or participation fees or to the gross income total prize money received. Furthermore, if there were both registration/participation fees and prize money, the tax rate was to be determined by considering the total corresponding to their sum.
Finally, if the gross revenue from the participations in question proved to be higher than that considered at the time of payment of the tax, the difference was borne by the organizer and the corresponding payment had to be made within fifteen days of the conclusion of the competitions.
Then, on a few observations respect to the international level, it would be appropriate for Article 17 of the OECD Model, rubricated 'Entertains and sportspersons', to contemplate a criterion, at least a subsidiary one, not necessarily linked to the exercise of an athlete's activity in another contracting State[33]. Indeed, the pacts rules already provide for the intervention of the criterion of the company's residence with respect to the directors to identify the source of income (see Article 16 rubricated 'Director's fees').

[30] Article 36, paragraph 6, of Legislative Decree No. 36 cit.
[31] For a reflection on the profiles of the rules generically brought under the broad category of tax benefits, see FIORENTINO, S. (2022). "Il diritto ai regimi di vantaggio: l'agevolazione fiscale", in CARINCI, A. & TASSANI, T. (Eds.), *I diritti del Contribuente. Principi, tutele e diritto di difesa*, Milan, p. 351 et seq.
[32] GIOVANNINI, A. (2013). "Capacità contributiva (art. 53 Cost.)", *Enciclopedia giuridica Treccani online*.
[33] TENORE, M. (2021). "E-sport: l'applicazione dell'articolo 17 Modello OCSE ai redditi conseguiti dagli e-gamer", cit.

ISSN 2036-7821

As regards our tax system, Article 73(3) of the TUIR has recently been reformulated.
In fact, Article 2 of the Legislative Decree No. 209/2023 has implemented the connection criteria provided for in the Conventions against double taxation and now the new rule indicates that resident companies and entities which, for most of the tax period, have their residence in Italy are subject to IRES. registered office, effective management, or principal place of business.
To conclude, the exercise of virtual sport denotes the unequivocal absence of material boundaries and the unequivocal presence of non-state systems and, therefore, the overcoming of the traditional pairing of place of residence - place of source of income with the consequent problems of fiscal nature, some of which are highlighted throughout these pages.
Extending the observations to technologies that use virtual/augmented reality in sport, thanks to technological devices and software capable of improving the performance and training of athletes by offering them the possibility of simulating real sports, the question remains relating to 'how' the income produced by a e-athlete in the real world can be taxed with respect to the activities performed by his avatar, regulated in smart contracts and remunerated in the form of crypto-assets or NFTs convertible into fiat currency.
There is no doubt, in fact, that these performances will generate wealth and, therefore, increases in the taxable income of those who digitally replicate activities performed in physical sports.
In this regard, the Agenzia delle Entrate has clarified that if an employer pays out tokens, these will constitute employee income to be declared, as well as subject to withholding tax[34].
If, on the other hand, the avatar habitually exercises arts or professions, the real taxpayer – of whom the former is his virtual representation – will have to declare the income received as falling within the category of self-employment.
Furthermore, the exchange or 'bartering' of crypto-assets or NFT's made in the metaverse and generating income should fall under the category of 'miscellaneous income', whereas the purchase of tokens for financial investments would result in the taxation of any difference earned in terms of capital gains.
All of this is clearly deductible according to current tax rules, but in the not-too-distant future we will have to ask ourselves whether it will be necessary to prepare a dedicate taxation (also) for the activities carried out in this ecosystem.

[34] See answer No. 14 of 28 September 2018.

ISSN 2036-7821