

Federal Supreme Court Rules Soccer Player's Compensation Taxable in 2017, Denies UAE Taxation Rights

19 September 2023

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In a recently published decision (9C_682/2022, 9C_683/2022), the Federal Supreme Court (FSC) ruled on a case concerning the right to taxation of compensation granted to a soccer player. The player's contract was terminated in 2013 by a club from the United Arab Emirates (UAE), and the remaining compensation was paid in 2017. The key issue was whether this 2017 payment should be taxed. The FSC ruled in favour of taxing it, considering it compensation for lost work rather than payment for personal sports-related activities. The FSC denies the UAE's taxation rights, and Switzerland retained the unlimited right to taxation.

(a) Facts. On 5 November 2011, the taxpayer signed a contract until 1 August 2015 with the soccer club C in the UAE. On 9 July 2013, a settlement agreement terminated the contract and soccer club C agreed to compensate the taxpayer with the amount of EUR 2,345,000 payable in five instalments from June 2013 to 30 June 2015. In October 2013, the taxpayer moved to the canton Basel-Landschaft and filed a tax return. In 2014, the soccer club C stopped the payments saying the claim was time-barred under UAE law. After a Court of Arbitration for Sport (CAS) decision of 25 April 2017, soccer club C paid the rest of the remuneration of CHF 1,813,412 to the taxpayer. The tax administration of Basel-Landschaft added this amount to the taxpayer's taxable income leading to a taxable income of CHF 2,981,600 (taxed for progression purposes at the worldwide net income of CHF 2,075,600) for the federal and of CHF 3,002,025 (taxed for progression purposes at the worldwide net income of CHF 1,047,964) for the cantonal and municipal taxes. The cantonal tax administration and Basel-Landschaft tax court rejected the taxpayer's appeal in September 2019 and June 2020. The cantonal administrative court later admitted the taxpayer's appeal and cancelled the previous decision. The court argued that the claim became taxable upon the signing of the settlement agreement in 2013, rather than solely upon the payment of CHF 1,813,412 in 2017. Consequently, the cantonal tax administration appealed to the FSC.

(b) Legal background. Under continuous practice, income is deemed to have accrued and is taxable as soon as - and to the extent that - the taxpayer can exercise control over it, and it increases the taxpayer's economic performance. Acquiring a claim becomes part of the taxpayer's assets if it can be quantified in monetary terms. Typically, a creditor possesses a fixed claim that is at their disposal, and such claims are considered fixed if they are enforceable and certain. Thus, a claim in the private sector can normally be taxed as income at the earliest on due date. Tax does not apply if the claim is subject to a condition precedent or a debtor's defense, making it uncertain. Furthermore, the agreement between Switzerland and the UAE for the avoidance of double taxation concerning taxes on income (2011; "DTC") applies when the taxpayer's residence is in either Switzerland or the UAE. Additionally, the right to taxation depends on the qualification of the compensation received by the taxpayer. Per article 17(1) of the DTC,

the income of a sportsperson is either taxable in the country of residence or in the country where the sports activity was personally performed. Conversely, article 15(1) DTC states that income is normally taxable in the taxpayer's country of residence, unless the professional activity was performed in the other contracting state, in which case it becomes taxable there.

(c) Issue. The case's core question was whether the compensation should be taxed in 2017. The right to taxation hinged on whether the taxpayer received compensation for their personal performance as a sportsperson in the UAE, per article 17(1) of the DTC. Alternatively, it involved determining if the compensation qualified as income from employment in the UAE under article 15(1) of the DTC, without meeting the conditions specified in article 15(2) of the same treaty.

(d) Decision. The FSC held that the compensation was taxable in 2017 as the soccer club C had initially refused payment. With regard to the right to taxation, the FSC stated that article 17(1) of the DTC did not apply as the compensation did not qualify as payment for an activity personally executed by a sportsperson in the UAE. Instead, the payment was considered a compensation for lost work. Furthermore, the FSC denied the UAE's right to taxation under article 15 of the DTC since the payment was not considered as income from employment but rather as compensation for the lost wages. Since the DTC does not contain any other provision granting the right to taxation to the UAE, under internal law, the unlimited right to taxation belongs to Switzerland. The FSC admitted the cantonal tax administration's appeal and annulled the decision of the previous instance.

Switzerland - Federal Supreme Court Rules Soccer Player's Compensation Taxable in 2017, Denies UAE Taxation Rights (19 Sep. 2023), News IBFD.

Exported / Printed on 9 Mar. 2024 by hkermadi@deloitte.lu.