



IBEROAMERICAN TAX MOOT COURT 2016 Case Competition

I. Issues

Reymar Da Cresta Impossible Santos Junior (“Reymar Jr.”) is a famous soccer player at the Mártires Fútbol Club (“MFC”), a traditional soccer team in the Professional League at the State of CARIOCONIA. Reymar’s employment contract with MFC expires in July of 2017. However, the soccer player and his father D. Reymar Da Cresta Impossible Santos Senior (“Reymar Sr.”) have publically expressed their wish for Reymar to play in the continent CHAMPIONSLIGONIA, especially in the State of TORERONIA that prides itself of having the best professional soccer league in the world.

In a meeting held on December 30th of 2014 at Rio de Bromario City, the President of MFC authorized Reymar Jr. to contact any soccer club from TORERONIA for the purpose of his inclusion as a soccer player, under the condition that he acquired the status of a *free agent* (a player without employment agreement to any Club).

Soon enough, several soccer clubs from TORERONIA contacted Reymar Jr. and his father in order to recruit the soccer player. In that process those clubs found out that the corporation R&R is the only entitled to choose the club for which Reymar Jr. shall play. Thus, the negotiations must be carried on with R&R directly. R&R is a company resident in the State of CARIOCONIA. 50% of the shares are hold by Mrs. Aloisia Madredocrack da Reymar and 50% by D. Reymar Da Cresta Impossible Santos Senior (“Reymar Sr.”) who acts as the solely manager of R&R .



On June 30th of 2015 Polakos Futbol Club (“PFC”), a sports corporation in the first division of TORERONIA’s Professional Soccer League, R&R and Reymar Jr. entered into an agreement regarding the future hiring of Reymar Jr. as a squad player for the Club. Pursuant to this agreement, R&R undertook that the soccer player should join the PFC team once his employment contract with MFC was terminated, in any case no later than August 20th, 2017.

As a consideration for such exercise of its rights, PFC agreed to pay R&R the amount of \$50 million Goldeneuros (hereinafter “G€”) the sole legal tender in CHAMPIONSLIGONIA. Both parties settled on the following terms of payment: (i) \$10 million G€ within fifteen (15) days from the contract signing and (ii) \$40 million G€ on August 25th, 2017.

The contract states that in the event of non-compliance with any of the established provisions, the defaulting party shall be liable to a compensation payment of \$50 million G€. Under this agreement, the subscription of an employment contract between PFC and Reymar Jr. prior to July, 2017 (date in which the player acquires the condition of *free agent*) will be deemed as a failure to comply within the terms of the arrangement. On July 15th, 2015 PFC paid R&R the first \$10 million G€, without withholding of any kind.

Through the summer of 2015, several clubs from TORERONIA came to know about the terms of the contract between R&R and PFC. Under those circumstances such clubs offered Reymar Sr. better working conditions for his son and even higher payments, if R&R agrees to Reymar Jr. joining their respective teams.

Those conversations came to the attention of PFC’s representatives who once again contacted R&R in order to anticipate the transfer. As a result of several meetings, on May 30th, 2016 MFC (entitled to the player’s federative rights until July of 2017), PFC, Reymar Jr. and Reymar Sr. signed a contract concerning the transfer of the player’s federative rights to PFC. As a consideration for the transfer of Reymar Jr., PFC remunerated MFC with \$20 million G€, without withholding of any kind.



On June 5th, 2016 PFC and R&R declared the termination of the contract signed on June 30th, 2015. Under those circumstances, PFC satisfied its obligation to pay the agreed compensation of \$50 million G€. The payment terms of such compensation were renegotiated. By 2015 \$10 million G€ were already paid. The remaining \$40 million G€ should be paid as follows: (i) \$35 million G€ on September 12th, 2016 and (ii) the remaining \$5 million G€ on January 20th 2017. PFC met its commitments on time, without withholding of any kind.

As a result of the previous arrangement PFC, Reymar Jr. and Reymar Sr. - acting as his son's manager - entered into an employment contract that bound the player to the Sports Club until June 8th, 2021. The working conditions agreed in the contract signed June 30th remained in place, those conditions were: (i) \$5.5 million G€ per season in wages and (ii) \$1 additional million G€ if he achieved a number of objectives.

Consequently, on August 15th, 2016 Reymar Jr. moved to Polakcity in TORERONIA, where the club is located. However, under TORERONIA's domestic tax law Reymar Jr. is not considered a resident in said country until January 1st, 2017.

Furthermore, on June 8th, 2016, PFC, R&R Imagemanaging and Reymar Jr. signed the transfer of his image rights. Under this contract, R&R Imagemanaging yielded the player's collective image rights and individual image rights (related to his status as a PFC player), to the latter entity. Through this new agreement, PFC undertook to pay R&R Imagemanaging the following amounts: (i) \$1 million G€ on September 1st, 2016 and (ii) \$800,000 G€ per season while the contract was in force.

On September 1st, 2016 PFC performed the payment for the transfer of Reymar Jr.'s image rights, without withholding of any kind. The company considered that the transaction gave rise to business profits or royalties, according to the Double Taxation Convention (DTC) in force between TORERONIA and INMATERIALONIA.

R&R Imagemanaging is a company resident in INMATERIALONIA. Reymar Jr. owns
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60% of the shares in the company; Reyemar Sr. owns another 30%; while Reyemar Jr.'s mother owns the remaining 10%. Finally, on June 8th, 2016 PFC and R&R signed a scouting agreement, under which R&R committed to render services regarding sports and technical monitoring of amateur players from different non-professional leagues located in CARIOCONIA, with the purpose of advising PFC in future recruitments and acquisition of preferential rights to such players. In the corresponding contract the parties agreed to an annual payment of \$500,000 G€ for the provision of such services, throughout five subsequent years. On December 1st, 2016, PFC paid the first \$500,000 G€ without deducting withholding tax, under the assumption that such payment constituted business profits under the DTC between TORERONIA and CARIOCONIA.

II. Legal framework

A. Double Tax Conventions (hereafter “DTC”)

TORERONIA and CARIOCONIA have a DTC in force that follows the UN Model Tax Convention (2011) except for the following:

Article 12. Royalties

1. Royalties arising in a Contracting State and paid to a resident of the other Contracting State may be taxed in that other State.

2. However, such royalties may be taxed in the Contracting State in which they arise, and according to the laws of that State, but the tax so charged shall not exceed:

(a) 10% of the gross amount of royalties arising from the use of, or the right to use, any copyright of literary, artistic or scientific works (including cinematograph films, films or tapes for television or radio broadcasting, provided they are produced by a resident of a Contracting State);

(b) 15% in all other cases.

3. The term "royalties" as used in this Article means payments of any kind received as a consideration for the use of, or the right to use, any copyright of literary, artistic or scientific works (including cinematograph



films, films or tapes for television or radio broadcasting), any patent, trade mark, design or model, plan, secret formula or process, or for the use of, or the right to use, industrial, commercial or scientific equipment, or for information concerning industrial, commercial or scientific experience.

4. Royalties shall be deemed to arise in a Contracting State when the payer is that State itself, a political subdivision, a local authority or a resident of that State. Where, however, the person paying the royalties, whether he is a resident of a Contracting State or not, has in a Contracting State a permanent establishment in connection with which the obligation to pay the royalties was incurred, and such royalties are borne by such permanent establishment, then such royalties shall be deemed to arise in the Contracting State in which the permanent establishment is situated.

5. The provisions of paragraphs 1 and 2 shall not apply if the beneficial owner of the royalties, being a resident of a Contracting State, has in the other Contracting State in which the royalties arise, a permanent establishment with which the right or property giving rise to the royalties is effectively connected. In such a case, the provisions of Article 7 shall apply.

6. Where, owing to a special relationship between the payer and the beneficial owner or between both of them and some other person, the amount of the royalties, having regard to the use, right or information for which they are paid, exceeds the amount which would have been agreed upon by the payer and the beneficial owner in the absence of such relationship, the provisions of this Article shall apply only to the last-mentioned amount. In that case, the excess part of the payments shall remain taxable according to the law of each Contracting State, due regard being had to the other provisions of this Convention.

Article 14 Independent personal services

1. Income derived by a resident of a Contracting State in respect of professional services or other independent activities of a similar character shall be taxable only in that State, unless the payment for



such activities and services is borne by a permanent establishment situated in the other Contracting State or a company resident of that other State. In such a case, such income may be taxed in the other State.

2. The term "professional services" includes, especially, independent technical, scientific, literary, artistic, educational or teaching activities, as well as the independent activities of physicians, lawyers, engineers, architects, dentists and accountants.

TORERONIA and INMATERIALONIA have a DTC in force that follows the OECD Model Tax Convention (2014).

B. Domestic legislation

1. Domestic legislation of Toreronia

The Tax authorities of TORERONIA passed a new rule to fight improper use of its treaty network (hereafter GAAR). The GAAR provides as follows:

“Notwithstanding any provision of any Convention in force, a benefit under that Convention shall not be granted in respect of an item of income or capital if it is reasonable to conclude, having regard to all relevant facts and circumstances, that obtaining that benefit was one of the principal purposes of any arrangement or transaction that resulted directly or indirectly in that benefit, unless it is established that granting that benefit in these circumstances would be in accordance with the object and purpose of the relevant provisions of that Convention.”

III. Pleadings

On January 1st, 2017, TORERONIA’s Tax Administration conducted a tax audit to PFC. As a result, and in relation to the above-mentioned contracts, the Administration issues a tax settlement that states:



1. PFC should have withheld Reymar Jr.'s Nonresident Income Tax, in relation to the amounts paid to R&R for the agreed compensation and, particularly, over the \$10 million G€ paid on July 15th, 2015 and the \$35 million G€ paid on September 12th, 2016. The Tax Administration argues that even if such income was paid to R&R, those must be qualified as wages in favor of the player, which are liable to tax at the State of Source following provision 17 of the DTC between TORERONIA and CARIOCONIA. The rate of withholding tax envisaged in TORERONIA's domestic legislation for this type of income is 25% from the corresponding gross income;
2. PFC should have withheld Reymar Jr.'s Personal Income Tax (resident's income) over the amounts paid to R&R on January 20th, 2017 (\$5 million G€). This income is also qualified as a wage in favor of the player and is subject to Personal Income Tax, taking into account that Reymar Jr. is resident in TORERONIA since January 1st, 2017. The withholding tax rate concerning Reymar Jr.'s income is 52% over the gross remuneration;
3. PFC should have withheld R&R Imagemanaging's Nonresident Income Tax, regarding the \$1 million G€ paid on September 1st, 2016 as compensation for the transfer of image rights.. The Tax Administration applied the GAAR, recently introduced in TORERONIA's Tax Code, denying the application of the DTC between TORERONIA and INMATERIALONIA and taxing the corresponding income as a wage paid to Reymar Jr., at withholding rate of 25% pursuing its domestic legislation;
4. PFC should have withheld R&R's Nonresident Income Tax over the income derived from the rendering of scouting services. Article 14 of the DTC between TORERONIA and CARIOCONIA allows the State of Source to tax this income. The withholding tax rate provided in TORERONIA's internal law for this type of income is 25% from the gross remuneration.



PCB decides to appeal this assessment before TORERONIA's Administrative Court, which is the competent authority to unlimitedly study all factual and legal matters that may arise as a result of the Tax Authority's practices.

IV. Current procedure

The case is now pending before the court. The court in which you are filing the petition (and before which you will later plead orally) only assesses legal arguments. Assume that you are in a rule-of-law country, where rules as well as general principles of law may be invoked. Please note that the Court will not assess any procedural issue.

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