



Sports Law & Taxation

FORMERLY KNOWN AS: GLOBAL SPORTS LAW & TAXATION REPORTS (GSLTR)

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2020/43 Dutch Tax Treaty Policy 2020 for sportspersons and artists



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EDITORIAL

It is with much pleasure that we welcome readers to the December 2020 edition (citation: *SLT 2020/3*) of our ground-breaking journal *Sports Law and Taxation (SLT)* and online database www.sportsandtaxation.com.

This past year has been a very strange and challenging one with the global outbreak of the coronavirus and its devastating economic and social effects around the world, not least its effects on sport, sportspersons and sports events, which have led to many cancellations and/or postponements of major events, including the 2020 Tokyo Summer Olympics.

So, we invited one of our regular contributors, prof. dr. Steve Cornelius of the University of Pretoria, South Africa, to give us his reflections on such a momentous and turbulent time. Here they are:

Sport and COVID-19: Quo vadis?

The year 2020 saw an upheaval in the global sports industry, the likes of which has hardly been seen since the year 390, when the Roman Emperor Theodosius I began to issue a series of decrees aimed at the criminalization of paganism in the Roman Empire, thereby effectively causing the demise of the ancient Olympic Games. Since the revival of the Olympic Games in 1896, the global sports industry has ground to a halt on only three occasions: twice when the world was at war; and, most recently, when the world was faced with the outbreak of a virus that had the potential to decimate the world's population. In reaction to the spread of COVID-19, governments across the globe ordered national lockdowns and sports events were cancelled one after the other. The most significant sports event to fall victim to COVID-19, was the 2020 Summer Olympic Games that were scheduled to be held in Tokyo from 24 July to 9 August 2020. After initial resistance, the Organising Committee of the Games eventually resolved to postpone the Games of the XXXII Olympiad to 2021, in the hope that COVID-19 would be brought under control or that a vaccine would be developed in time. It appears that the former may have been somewhat optimistic, as the massive resurgence of COVID-19 during the European winter seemed to suggest. The latter was equally optimistic, as the development and mass production of vaccines is, at the best of times, an arduous process. Nonetheless, some early vaccine trials appear to show promise. Yet, the big question remains: will the Olympic Games take place in 2021? This is a crucial matter, since the IOC

has already indicated that there is no scope to postpone the Games beyond 2021, as to do so would interfere with the hosting of the next Winter Olympic Games. Even if the Olympic Games take place in 2021, it is not clear what the impact of COVID-19 would be. National lockdowns and travel bans, coupled with weeks of isolation or quarantine, have played havoc on athletes' preparations for the Games. Furthermore, COVID-19 has caused the closure of gyms, pools, clubs, stadiums, physiotherapy centres and other facilities that athletes need to prepare for participation. Elite athletes train and participate according to carefully planned schedules. All of the schedules have had to be revised as a result of COVID-19, and, as a result, many aspiring Olympic athletes may find that they are ill-prepared to compete at the highest level. Another question, which has not quite been answered yet, is whether the full programme of the Olympic Games, as originally proposed, will be presented. There have been suggestions that some of the sports or events may be cut from the programme to reduce the number of athletes who have to travel to Tokyo for the Games. In similar vein, it has also been suggested that the various sports could reduce the number of athletes or teams that are allowed to participate. However, it was not only the Olympic Games that have suffered the impact of COVID-19. Across the globe, hundreds of sports events, ranging from world championships, such as the World Athletics Indoor Championships and the Outdoor Bowls Championships, and international tournaments, such as the Southern hemisphere Super Rugby tournament, to national events and local events have been called off or postponed. In some instances, events or tournaments have taken place without some of the participants who were unable to travel or field competitive teams. A significant example being the decision that the Rugby Union World Champion Springbok team would not participate in the Southern hemisphere Rugby Championship – the first time since its inception in 1996. In spite of the challenges, sports federations, such as FIFA, have also shown solidarity and supported the World Health Organization to educate people across the globe on steps that could limit the spread of COVID-19. As the sports industry has slowly come to grips with COVID-19, there has been a gradual resumption of sports events. Adaptations have had to be made to protect the safety of athletes and fans. In most cases, sports events have taken place in closed venues without spectators or the number of spectators severely restricted. Training protocols have also been adjusted to ensure

that physical distancing could be maintained. It would seem that everybody is looking forward to 2021, with the hope that life would return to normal. However, at this time, there is no clear indication that life would indeed return to normal in 2021. The resurgence of COVID-19 during the winter months in Europe and North America is a stark reminder that the road to recovery will be a long and arduous one. The distribution of a vaccine on a global scale, may still be years away and, like other coronaviruses, the SARS-CoV-2 virus that causes COVID-19, will continue to rear its devastating head during the winter months. Even when some sense of normality returns, sports federations may find that COVID-19 has forever changed the sporting landscape. The impact of COVID-19 on the global economy will have inevitable consequences for sports federations. The pool of potential sponsors would certainly have been severely drained and the funds that remaining sponsors can invest in sport will certainly also have been depleted. As a result, sports federations may find it much harder to obtain lucrative sponsorships. Similarly, athletes may find that endorsements are harder to come by and companies are willing to pay less for them. Not a happy prospect!

However, it has not all been doom and gloom during this year. There have been a number of major sporting achievements and highlights, some of which are worth mentioning.

Lewis Hamilton, the 35-year old British Formula One driver won the Portuguese Grand Prix on 25 October 2020, and, in doing so, making this his 92nd win. In a fortnight, following the German Grand Prix, he had equalled and overtook Michael Schumacher's previous record of 91 Formula One wins. He was then poised to win his seventh world championship, as early as the following month, which would make him the greatest Formula One driver of all time. In fact, Lewis Hamilton did just that by winning the Turkish Grand Prix on 15 November 2020. With this victory – his 94th win – which has been described as “masterful” in view of the atrocious conditions at the Istanbul Park Circuit and his starting from 6th place on the grid, Hamilton has achieved his seventh world title. This equals the achievement of Michael Schumacher. Hamilton has been described as the greatest Formula One driver of all time and remarked on his success, quite emotionally, as follows:

“To all the kids out there, dream the impossible.”

And added, quite modestly, as follows:

“Seven is just unimaginable but when you work with such a great group of people and you really trust each other, there is just no end what you can do together.”

Hamilton won his titles in 2008, 2014, 2015, 2017, 2018, 2019 and again this year. So far, Hamilton does not have a contract for next year,

but confirmed that he would love to stay in Formula One and he will also continue his campaign for change in human rights, diversity and environmentalism. At the time of writing, he is in talks with Mercedes. However, the Fédération Internationale de l'Automobile (FIA), the governing body of world motor sport, is looking into the wearing by Hamilton at the Tuscan Grand Prix on 13 September 2020 of a T-shirt with the legend *“Arrest the cops who killed Breona Taylor”*. Breona Taylor was a black woman, who was shot by US police in her Louisville, Kentucky, home in March 2020. Hamilton wore the T-shirt during the pre-race anti-racism demonstration and on the winners' podium, where he said: *“Say her name.”* A spokesman for the FIA said that the FIA was a non-political organisation and that the anti-racism T-shirt may have infringed their regulations. After the race, a spokesman for Hamilton's F1 Mercedes Team in answer to a Twitter user who asked Hamilton *“to keep politics out of F1”* stated:

“We're not bringing politics into F1; these are human rights issues that we're trying to highlight and raise aware of.”

This may be an artificial distinction. Whilst, human rights are certainly a legal issue, at the same time, they are also a political one and nowadays it is difficult to keep politics out of sport. It will be interesting to see whether Hamilton is sanctioned by the FIA, especially as the FIA and Formula One have mounted an anti-racism and pro-diversity campaign this year, which includes anti-racism demonstrations before every race!

We would now like to salute and congratulate another sports person on a major sporting achievement. This time the praise goes to Rafael Nadal on his 1,000 ATP Tour win at the Paris Masters, on 4 November 2020, against his fellow countryman, Feliciano Lopez. This comes one month after winning the French Open for the 13th time. This was Nadal's 20th grand slam and equals Roger Federer's record. Nadal received a glass trophy, with the number 1,000 in gold engraved on it, to mark his achievement. Nadal, who is 34, remarked modestly:

“To arrive at that number I must have done a lot of things well.”

He joins Jimmy Connors, who leads with 1,274 wins; followed by Roger Federer with 1,242 wins; and Ivan Lendl with 1,068 wins in the 1,000 wins' club.

We now turn our attention to association football (soccer) and congratulate Pelé – real name: Edson Arantes do Nascimento – the famous Brazilian retired footballer, who has turned 80. Pelé, the veteran of three World Cups wins in 1958, 1962 and 1970, has dominated the world of football for more than fifty years. He has earned 92 international caps and scored 77 goals and is just one of four players to have scored in four World Cups. In 1961, the Brazilian

Government declared Pelé an “*official national treasure*” to prevent him from being transferred out of the country. Amongst his many other honours, in January 2014, he was awarded the first ever FIFA Ballon d’Or Prix d’Honneur in recognition of his contribution to world football. Also, an 800 square metres street mural of him has been painted in the Brazilian city of Santos, where he first played as a professional footballer, by the Brazilian graffiti artist Eduardo “Kobra” in honour of his 80th birthday. We would also mention that Pelé has also had a colourful life off the field of play! Is he the greatest footballer of all time? Whether he is or is not, we salute him as a great sportsman and wish him a very happy birthday and many happy returns!

Continuing with football, which, despite its financial problems caused by the pandemic, remains the world’s favourite sport, we would record some highlights of the Summer 2020 transfer window, which ended at 23:00 BST on 5 October 2020, later than usual, due to the COVID-19 pandemic. Perhaps not surprisingly, the English Premier League clubs spent less than in the 2019 Summer transfer window: £ 1.218 billion compared with £ 1.376 billion, down by £ 158 million. There were only 12 signings by English Premier League clubs on the deadline day, less than last year’s signings of 18. The largest deal of the deadline day was the signing by Arsenal of the Atlético Madrid midfielder, Thomas Partey, for the sum of £ 45.3 million. In the top five European Leagues, spending on players was significantly down compared with the previous five years’ average spending, ranging from –7% by English Premier League clubs to –46% in the equivalent Spanish league, La Liga. It was also reported that spending by the English Premier League clubs was more than three times that of La Liga, Bundesliga and Ligue 1 and double that of Serie A. Chelsea spent the most on players in the 2020 Summer transfer window, namely, £ 222 million; whereas, Manchester City and Barcelona were the only European clubs to spend more than £ 100 million on players, namely £ 141 million and £ 112 million respectively. But not forgetting women’s football, which continues to be very popular, the 2020 UK Summer transfer window produced some startling results. Of the 73 new signings for the Women’s Super League (WSL) clubs, only 23 have been English players. This means that 68.5% of these signings have been foreigners. In fact, 21 nationalities are represented. In particular, Manchester United and Manchester City Women’s clubs have signed four members of the US World Cup winning team! Of course, this shows the growing popularity of the WSL in attracting foreign “stars” but what about young English talent and their development and opportunities for playing in top teams? To address this situation, it has been reported that the WSL is introducing a “home grown” players’ quota from the 2021-2022 season onwards. Under the new rules agreed between the clubs and the English FA (Football Association), which is responsible

for the women’s game, of each club’s squad capped at 25 players, a minimum of 8 players must have been trained by their club, or another club in England, for at least three years before their twenty-first birthday. Incidentally, the same rules will apply to the men’s game. Also, following the UK’s final exit from the European Union (“brexit”) at the end of this year, there will be further restrictions on the recruitment of foreign players. Only the “top” talent is expected to be granted a work permit. It has also been reported that, before all WSL matches, there will be a minute’s applause to show appreciation of the UK National Health Service in their fight against the coronavirus, following which, interestingly, all the teams will also take a knee to show solidarity for the “Black Lives Matter” movement.

Finally, we salute a couple of older practising sportspersons, which all goes to show that age is no barrier to sport, either at the elite or grass roots’ levels! This year’s postponed London Marathon finally took place on 4 October 2020 and, due to the COVID-19 pandemic, the event was run locally by competitors. Amongst the competitors was 87-year-old Ken Jones, who was taking part for the 40th time and ran laps around the Strabane countryside in Northern Ireland where he lives. Jones, who has competed in over 112 marathons, was the oldest competitor in this year’s London Marathon and has competed every year since the event was first held in 1981. Turning, once again, to football, another sportsman still going strong and competing is Japanese professional footballer, Kazuyoshi Miura, who is the captain of the top-division club, Yokohama, and is 53 years’ old. His playing career is at least 15 years longer than average and there are no signs of his retirement. Known as “King Kazu”, he is in the Guinness Book of Records as “the world’s oldest goal scorer” and has achieved a God-like status in Japan. We salute both of them on their sporting achievements.

Now we turn our attention to the articles that you will find in this issue.

As you will see from the Table of Contents of this issue, we include a wide range of sports law and sports tax articles, which will engage our readers attention and provide them with much “food for thought”, especially on the troubles of the Trinidad and Tobago Football Association and the measures taken by the world governing body of football, FIFA. We would also highlight the article on the ongoing litigation with HMRC regarding the tax status of football referees in the United Kingdom.

As always, we would welcome and value your contributions in the form of articles and topical case notes and commentaries for our journal and also for posting on the SLT dedicated website www.sportsandtaxation.com. Finally, we are taking this opportunity of wishing all of our contributors and readers the compliments of the season and all the best in the New Year, notwithstanding the COVID-19 pandemic, and whatever 2021 may bring. Let us hope that some kind of normality will return soon, and, as they say in French: bon courage!

So, now read on and enjoy the December 2020 edition of SLT.

Dr. Rijkele Betten (*Managing Editor*)

Prof. Dr. Ian S. Blackshaw (*Consulting Editor*)

December 2020