



# Sports Law & Taxation

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

## Contents

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2021/12 The potential liability of sporting associations for COVID-19 induced harms to players. Part two

2021/13 Women in sport. The changing landscape

2021/14 Update from the “sports law superpower”. Recent developments in Swiss association law

2021/15 Sport in Gibraltar. Where “normal” might be the “new normal”

2021/16 The commercial exploitation of youth athletes in South Africa. Part two

2021/17 Can the new law save Turkish football clubs?

2021/18 Tax, state aid and professional football: The FC Barcelona case

2021/19 The Netherlands: Changes in Tax Treaty Policy 2020 for sportspersons and artists

2021/20 United Kingdom: HMRC guidance on image rights and payments to intermediaries



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# Table of Contents

Vol. 12 No. 2 June 2021

Editorial	4
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## Articles

2021/12 The potential liability of sporting associations for COVID-19 induced harms to players. Part two <i>by Dr Jason Haynes</i>	9
2021/13 Women in sport. The changing landscape <i>by Athena Constantinou</i>	14
2021/14 Update from the “sports law superpower”. Recent developments in Swiss association law <i>by Rafael Braegger</i>	19
2021/15 Sport in Gibraltar. Where “normal” might be the “new normal” <i>by Ian Felice</i>	23
2021/16 The commercial exploitation of youth athletes in South Africa. Part two <i>by Zawadi Dlamini and Steve Cornelius</i>	26
2021/17 Can the new law save Turkish football clubs? <i>by Serdar Bezen and Ye im Bezen</i>	32
2021/18 Tax, state aid and professional football: The FC Barcelona case <i>by Anna Gunn</i>	37
2021/19 The Netherlands: Changes in Tax Treaty Policy 2020 for sportspersons and artists <i>by Dr Dick Molenaar</i>	43
2021/20 United Kingdom: HMRC guidance on image rights and payments to intermediaries <i>by Ian Bowie and Kevin Offer</i>	47
2021/21 Italy: Exploitation and taxation of image rights. Key takeaways from recent guidance issued by the Italian tax authorities <i>by Elio Andrea Palmitessa</i>	51
2021/22 Spain: The use of personal service companies <i>by Eduardo Montejo and Carlos Carnero</i>	56

# EDITORIAL

It is with much pleasure that we welcome readers to the June 2021 edition (citation: *SLT 2021/2*) of our ground-breaking journal *Sports Law and Taxation (SLT)* and on-line database ([www.sportsandtaxation.com](http://www.sportsandtaxation.com)).

Once again, association football (soccer) continues to dominate the sporting headlines and probably the most important recent development is the short-lived and highly unpopular proposal for a new European Super League (ESL), which was announced on 18 April 2021 and was abandoned on 21 April 2021, following widespread opposition to the proposal, not least from football fans, whose influence had been underestimated by the architects of the proposed ESL. But, let our football expert, Jonathan Copping, take up the story. He writes as follows.

## The ESL proposal

*"At approximately 23:00 GMT on Sunday 18 April 2021 a press statement was released on the website [www.thesuperleague.com](http://www.thesuperleague.com). The start of the press statement read as follows:*

*"Twelve of Europe's leading football clubs have come together to announce they have agreed to establish a new mid-week competition, the Super League, governed by its Founding Clubs.*

*AC Milan, Arsenal FC, Atletico de Madrid, Chelsea FC, FC Barcelona, FC Internazionale Milano, Juventus FC, Liverpool FC, Manchester City FC, Manchester United, Real Madrid CF and Tottenham Hotspur have all joined as Founding Clubs. It is anticipated that a further three clubs will join ahead of the inaugural season, which is intended to commence as soon as practicable."*

*The statement and announcement took nearly everyone by surprise and resulted in widespread condemnation by fans, players, the media, politicians and the football governing bodies. Approximately 72 hours later, the European Super League was dead. Its existence was extremely short lived. According to reports, the ringleaders behind the Super League were Real Madrid and Manchester United. Real Madrid President, Florentino Perez, was named as the Chairman of the league. Manchester United's Co-Chairman, Joel Glazer, was named as the Vice-Chairman of the league. The fundamental problem with the European Super League was that nobody wanted it except the owners of the founding clubs. Whilst reports acknowledge that the founding clubs were braced for a backlash to the announcement, it seems that the backlash was far more ferocious and wider than anticipated. The founding clubs played their hand terribly. There was no engagement with the fans or any other*

*interested party, other than it seems JP Morgan, the American Investment Bank that was going to fund the league to the tune of somewhere between US\$ 3.5 billion and US\$ 4 billion. Once the press statement was released, the founding clubs failed to make any further announcements, save for Arsenal and Chelsea releasing statements on their websites and social media platforms confirming their participation. The players and management of the founding clubs knew nothing about the proposed league. The Liverpool, Chelsea and Manchester United managers were left to answer questions from the media about the announcement yet knew nothing about it themselves! Aleksander Ceferin, the UEFA President, released a scathing attack on some of the individuals behind the creation of the league. It should be noted that UEFA has recently agreed to reform its club competitions: the Champions League, the Europa League as well as the introduction of the Europa League Conference League. The founding clubs of the Super League had agreed to the UEFA reforms. In relation to Juventus President, Andrea Agnelli, Mr Ceferin remarked:*

*"Andrea Agnelli is the biggest disappointment of all, I've never seen a person that would lie so many times, so persistently as he did. It's unbelievable."*

*Regarding Manchester United's Ed Woodward, who resigned from his position as Manchester United's Vice-Chairman 48 hours after the announcement of the Super League, Mr Ceferin commented:*

*"If I start with Ed Woodward, he called me last Thursday evening saying he's very satisfied with and fully supports the reforms and the only thing he wants to talk about was Financial Fair Play, when obviously he had already signed something else."*

*Whilst the Super League has created almost universal uproar, what were the real reasons for its intended inception by the founding clubs? The answer is, no doubt, a complex issue, including multiple reasons, arising out of both corporate, financial and regulatory issues; however, the overarching theme appears to be that the founding clubs no longer have a primary focus on the football, but a greater focus on commercial revenues. It would be difficult to argue against this when the format of the Super League was going to be a closed shop, with only five teams being able to qualify and the fifteen founding clubs being exempt from relegation, thus creating a steady business model that is not under threat from rivals. This is the model used in American sports – and it is to be noted that a number of the founding clubs are*

American owned – although there is a draft system in place to supposedly rebalance competition. The six English founding clubs have been the dominant forces in the Premier League since its inception nearly thirty years ago, winning the league between them every season except two (Blackburn Rovers and Leicester City winning the other two). The Premier League has been extremely lucrative for the six founding clubs, creating huge TV revenues and commercial deals. Stadiums have been built (or redeveloped) into some of the best football stadiums in the world and a significant number of the best footballers have been enticed to clubs with huge transfer fees and salaries. The result of the huge increase in revenues for the founding clubs, is that they have subsequently been purchased by foreign owners, who have little interest in the traditions of the English game, but more of a focus on maximising revenues. It should be noted that a number of foreign owned takeovers of football clubs have been by way of debt finance, Manchester United being probably the most notable club to be purchased this way by Malcolm Glazer in 2005. This has created a problem for the English founding clubs in that the huge TV revenues have resulted in the broadcasters demanding that they air more and more matches on TV (on subscription-only channels) and their rivals have also been snapped up by foreign based owners, who now have more funds to challenge the status quo. There is a belief that the TV revenues may have reached saturation point. This may well turn out to be correct and we will know that once the next round of Premier League broadcasting packages are sold. Florentino Perez also appears to believe that TV revenues might be at saturation point. In a statement he released after the announcement of the Super League, Perez stated:

“Young people are no longer interested in football. They have other platforms on which to distract themselves...”

The first sentence in the above quote is patently not true. There is huge interest in football amongst young people, but there might be some truth in the argument that young people (and people in general) are turning off from watching football on TV, which is where Real Madrid and the other founding clubs will feel the squeeze. If this view is correct, then the reasons for that have ultimately been contributed to by the founding clubs. For the founding clubs to receive more revenue, the broadcasters need to buy the rights at higher prices. This results in the broadcasters needing to sell their TV packages to consumers at higher prices. But consumers only have finite resources. Consumers also have many more options to consume entertainment, which Perez is surely referring to when he stated that “They have other platforms on which to distract themselves.” If the Super League clubs want to increase revenues and profits, which they do, then they could all make a concerted effort to focus on reducing their largest outgoings: players’ salaries. In the Deloitte Annual Review of Football Finance 2020, it was stated that:

“Over the last two completed seasons the combined increase in wage costs has outstripped revenue growth of Premier League clubs.”

This is a startling position and, as a result of football clubs not receiving match day revenues for approximately one year due to the Covid-19 pandemic, wages to revenue ratio is likely to be much higher, possibly at unsustainable levels. The reason why footballers’ salaries are so high is a simple case of supply and demand; however, some of the founding clubs have been major drivers in increasing players’ salaries in order to maintain their lofty positions at the top of the football pyramid. In order to attract the best footballers, the founding clubs need to pay the biggest salaries, which, in effect, increases the salaries of all other players. Seventeen out of the twenty most expensive player transfers in football have involved a founding club as the purchasing club (the other three transfers involved Paris St Germain and Bayern München – whose failure to commit to the Super League is a potential reason why it failed from the outset. At the moment of writing this, the announcement of the Super League is approximately two weeks old. Following the dramatic collapse on Wednesday 19 April, there has been very little in the way of follow-up from the football authorities. It is understood that executives at the six English founding clubs have been forced to resign from their advisory roles at the Premier League. Various sanctions have been mooted against the clubs, but none so far have been handed down. Sanctions appear to be a double-edged sword as the founding clubs still remain the biggest attractions in terms of commercial revenues to the authorities, whether that be the Premier League in England, La Liga in Spain, Serie A in Italy or UEFA. Whilst we do not know what the exact outcomes will be of the failed Super League project, it appears unlikely that it, or a similar project, is going to happen anytime soon. The founding clubs have been well and truly stopped in their quest for greater control and autonomy of their businesses. This is a good thing for both fans, who have proved supreme in this controversial affair, and also for sporting competition, which has also triumphed!”

### **The English Premier League statement on the European Super League**

Following the collapse of the proposed European Super League, the English Premier League has issued, on 3 May 2021, the following statement.

“The events of the last two weeks have challenged the foundations and resolve of English football. The Premier League has prepared a series of measures to enshrine the core principles of the professional game: an open pyramid, progression through sporting merit and the highest standards of sporting integrity. These measures are designed to stop the threat of breakaway leagues in the future. Opposition to the proposed Super League united the whole of football, with the fans’ voice clearly heard. The Premier League recognises the strength of feeling and the right of fans to know what is happening. We are committed to maintaining close dialogue with supporters and their representatives, as we work with The FA and Government to identify solutions, but ask that all protests are peaceful. The actions of a minority of those present at Old Trafford on Sunday have no justification and will be investigated by the Premier League and The FA as well

as by the Greater Manchester Police.

The actions of a few clubs cannot be allowed to create such division and disruption. We are determined to establish the truth of what happened and hold those clubs accountable for their decisions and actions. We and The FA are pursuing these objectives quickly and appropriately, consulting with fans and Government.

In addition, the Premier League, supported by The FA, is taking the following actions to protect our game, our clubs and their fans from further disruption and uncertainty:

- Additional rules and regulation to ensure the principles of the Premier League and open competition are protected
- A new Owners' Charter that all club owners will be required to sign up to, committing them to the core principles of the Premier League
- Breaches of these rules and the Charter will be subject to significant sanctions
- We are enlisting the support of Government to bring in appropriate legislation to protect football's open pyramid, principles of sporting merit and the integrity of the football community

We will work with the fan groups, Government, UEFA, The FA, EFL, PFA and LMA to defend the integrity and future prospects of English Football."

### The UEFA sanctions on the ESL founding clubs

The governing body of European Football, UEFA, has imposed financial sanctions on nine of the twelve football clubs involved in the proposed European Super League (ESL), including the six leading English Premier League clubs.

The nine clubs concerned are: Arsenal; Chelsea; Liverpool; Manchester City; Manchester United; Tottenham Hotspur; AC Milan; Inter Milan; and Atletico Madrid.

All these clubs have committed to UEFA and its European competitions and have agreed to contribute a combined sum of € 15 million as a goodwill contribution to benefit children's and grassroots football throughout Europe. In addition, 5% of UEFA competition revenues will be withheld from them for one season, beginning in 2023-2024, and these funds will be redistributed in Europe, including the United Kingdom.

Joel Glazer, the Co-Chairman of Manchester United will pay his club's portion of this goodwill contribution and the competition revenue will also not be borne by the club.

Kroenke Sports and Entertainment, the owners of Arsenal, will bear all costs incurred by the EFL, and Tottenham has stated that: "any fines will be the responsibility of the owners".

The nine clubs will also face fines of € 100 million each, if they seek to join any unauthorised competitions in the future, and a fine of € 50 million if they breach any other terms of their commitment to UEFA.

They will also rejoin the football lobbying group the European Club Association.

Aleksander Ceferin, the President of UEFA, stated:

*"In accepting their commitment and willingness to repair the disruption they caused, UEFA wants to put this chapter*

*behind it and move forward in a positive spirit."*

And added:

*"These clubs recognised their mistakes quickly and have taken action to demonstrate their contrition and commitment to European football."*

However, the three other clubs, Real Madrid, Barcelona and Juventus, have not committed to UEFA and remain involved in the ESL, and, thus, according to Ceferin, these clubs will face disciplinary action and be dealt with by UEFA subsequently.

It may be noted, *en passant*, that the fine of € 100 million, mentioned above, might not, depending upon the circumstances, be enforceable under EU and national competition law, but this remains to be seen!

### Aftermath of the ESL debacle

As a follow on to their opposition to the ESL, football fans demonstrated inside and outside the Old Trafford stadium at the tie between Manchester United and Liverpool on 2 May 2021.

They were protesting against the Glazer family's ownership of the club and, in particular, their lack of sporting interest in the club (so-called "absentee owners"), being interested only in their financial interest. Manchester United Football Club was taken over by Malcolm Glazer in June 2005 in a buyout that leveraged £ 525 million onto the club. He died in 2014, but his two sons, Avram and Joel took over and are co-chairmen of the club. Joel, in fact, was named as Vice-Chairman of the ESL and, following its collapse, apologised to the fans in an open letter.

Around a hundred of them broke into the ground and stormed onto the pitch and, in the course of the melee, two policemen were injured, one of whom required hospital treatment, and officials had to take shelter in their rooms, for their safety. Firecrackers and flares were thrown and the fans caused criminal damage.

As a result of their protests and criminal behaviour, the game eventually had to be abandoned on the grounds of safety and security. The League condemned the violence, criminal damage and trespass and stated that such behaviour "should have no place in football [and] fans have many channels in which to make their views known, but the actions of a minority as seen today have no justification".

Certainly, this is not the way for fans to behave, however strongly they feel about any matter affecting their clubs. As the UK Minister for Tourism and Sport, Nigel Huddleston, remarked:

*"Passions are running high in football but there are ways to protest and make your voice heard without hurting or endangering others."*

Calls have been made for the English Premier League to take appropriate disciplinary action.

Apart from any criminal proceedings being taken by the Greater Manchester police against any of the protesters, it is to be hoped that the Premier League, in order to reflect



the inexcusable behaviour of the fans, will heed these calls for disciplinary action and impose severe sporting penalties, which will set a precedent and, hopefully, act as a deterrent against similar behaviour by fans in the future.

## The IPL suspended

The sporting headlines have also been dominated by the continuing effects of the COVID-19 pandemic, which, at the time of writing, has globally claimed some 3.3 million lives. The situation in India has grown particularly serious, where India has the largest number of cases in Asia! The pandemic has also taken its toll on sport, not least on the most popular Indian Premier League (IPL) Twenty20 Cricket Tournament. In a second wave of the pandemic, infections in India have surpassed 25 million and deaths have exceeded 300,000, with around 120 deaths per hour! It is not surprising, therefore, that the IPL has been suspended indefinitely. Announcing the suspension of the tournament, Brijesh Patel, the IPL Chairman, stated that:

*"Right now we can't say when we can reschedule it."*

A match in Ahmedabad had to be rescheduled following two Kolkata Knight Riders' players testing positive for the disease and two non-playing members of the Chennai Super Kings franchise have also contracted the disease. According to media reports, the Indian Cricket Governing Body, the BCCI, was considering transferring the remaining 31 matches to Mumbai, which has three stadiums.

Although the tournament was being played in a bio-secure bubble without spectators, the IPL has been widely criticised, on social media, for continuing the tournament in the midst of the pandemic in India, where there are severe shortages of oxygen and ventilators and hospitals are being overrun and stretched to the limits with cases. The IPL comprises eight teams and is the richest Twenty20 league, with an estimated brand value of US\$ 6.8 billion, attracting many of the best players from around the world.

## Formula One

Mention should also be made of the latest development in Formula One, namely so-called "sprint racing" at certain Grand Prix meetings. In order to add to the excitement of a race weekend, Formula One is introducing these "sprint races" on the Saturday afternoon at three Grand Prix races this year: at Silverstone in July; Monza in September; and Sao Paulo in November. The sprint races will be run over 100 kilometres and the results of these races will count towards the grid positions of the Grand Prix races themselves, which will be run over a full race distance on the Sunday. The winner of the sprint races will receive 3 points; the runner up 2 points; and the driver in third place 1 point. Stefano Domenicali, the head of Formula One, commented as follows:

*"We are excited by this new opportunity that will bring our fans an even more engaging race weekend in 2021."*

And he added as follows:

*"Seeing the drivers battling out over three days will be an amazing experience and I am sure the drivers will relish the fight."*

Jean Todt, the President of the FIA, the world governing body of motor sport, welcomed this latest development "to spice up the action" and stated:

*"I am pleased to see that Formula One is seeking new ways to engage with its fans and enlarge the spectacle of a race weekend."*

Formula One is not the only sport introducing new formats to engage existing fans and win new ones. Take cricket, for example, and the introduction of the new competition "The Hundred" – see the post of 15 April 2021 on the *Sports Law and Taxation* website at [www.sportsandtaxation.com](http://www.sportsandtaxation.com). Incidentally, Italian sparkling wine will replace French champagne on the podium and in the Paddock Club, following the Italian winemaker, Ferrari Trento, being appointed an official partner of Formula One. Quite a change! Also, a brief mention of the death of the former FIA President, Max Mosley, who did so much for Formula One, especially on the safety side of the sport, following the death of Ayrton Senna in 1994.

## 2020 Tokyo Olympics

Assuming that, despite the COVID-19 pandemic and opposition from 80% of the Japanese population, the postponed 2020 Tokyo Summer Olympics do, in fact, take place, as scheduled and expected, it will be interesting to see how well the five new Olympic sports of baseball/softball, karate, skateboard, sports climbing and surfing, which were approved by the IOC at the Rio Olympics in 2016, are received! In any case, one is bound to ask whether these new Olympic sports will enhance or lead to a dilution in the prestige and the value of the Games and, as intended, increase their popularity amongst younger sports fans?

## Articles in this issue

Now we turn our attention to the articles that you will find in this issue. As you will see from the Table of Contents, we include a wide range of sports law and sports tax articles, which, we are sure, will engage our readers' attention and provide them with much "food for thought". One article, in particular, deserves special mention: "Women in sport: the changing landscape" by one of our regular and distinguished contributors, Athena Constantinou. This article reflects on some of the current issues of equality of women in sport compared with their male counterparts, including access to professional sports and the gender pay gap. As she points out in her article:

*"Although progress has been made so far, there is still an ongoing battle in connection with the gender pay gap; the continuous objectification of female athletes; and their inequitable media coverage. There is a lot of room for improvement as we are still not near a sports industry where women athletes are given a fair*

*chance, which allows them to achieve true equality.”*

Such important issues will continue to claim our attention and that of sports governing bodies, sports administrators and sports marketers alike for the foreseeable future, with a view to putting women athletes on a level playing field with male athletes!

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 at [www.sportsandtaxation.com](http://www.sportsandtaxation.com).

So, now read on and enjoy the June 2021 edition of SLT.

Dr. Rijkele Betten (*Managing Editor*)

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