Sports Law & Taxation

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The case of Cristiano Ronaldo

Image rights and the taxation of their exploitation in the Italian legal system

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How are image rights regulated in the Italian legal system and why are they so important in sports?

The term "image rights" generally means a person's right that one's image shall not be disclosed, exhibited, or otherwise published, without consent and outside the cases provided for by law. Violation of these rights typically entails an obligation to indemnify for damages.

The Italian legislature has historically considered image rights as personality rights – as well as absolute. Therefore, image rights are indisposable, cannot be assigned or alienated, and are imprescriptible, since they are not extinguished by prolonged non-use.

Art. 10 of the Italian Civil Code, contained precisely in volume first, which relates to persons and the family, is one of the most significant provisions to regulate the use of image rights and prevent possible abuse; this article recognizes the right of the image rights holder to obtain, in the instance of misuse, compensation for damages suffered, as well as the possibility of claiming injunctive measures to cease unauthorized or detrimental use of the image.

Whilst, therefore, the image rights cannot be sold, there is no limit to the option of granting the economic exploitation of these rights by other parties.

It is the Italian Copyright Act, dating back to 1941, that allows for this possibility. Specifically, art. 96 and 97 of Law 633/1941 require the consent of the persons portrayed to authorize others to display, reproduce, or market the images, without necessarily having the purpose of either obtaining economic benefit.

On the other hand, the consent of the person portrayed is not needed when the reproduction of the image is justified by notoriety and the exigency of justice, scientific, educational, or cultural purposes, or when the reproduction is related to facts of public interest.

In conclusion, even if the person is notorious, consent is still needed if the purpose of the use is for advertising or general commercial purposes.

In the sports' sphere, image rights reach much higher peaks of relevance, since, in addition to conveying a claim for damages in case of infringement, they encompass economic value that can be marketed at a sometimes exorbitant price. In broad terms, we can say that the more famous a person portrayed is, the greater will be his or her commercial potential and the larger the returns he or she can obtain. Accordingly, an athlete of great fame will be able to make significant profits from the transfer of the right to use his or her image for commercial purposes.

Despite this, apropos of the world of soccer, the image rights of professional football players are not generally regulated in sports law, apart from small provisions provided in Italian sports law and which we will see below. These modern idols, as the main character of this system, were featured in an interesting Italian judgment that even went so far as to protect the "evocative image".

Indeed, Italian jurisprudence has not too long ago ruled that image meant as a right to be protected, is not only the picture-perfect representation of the person but also the context that brings to mind the person. It has been the Court of Milan, business division,[3] at the conclusion of a suit filed by Gianni Rivera, Italian Ballon d'Or and icon of AC Milan, for the use of his image for commercial purposes to lay down this path.

It has been ruled that the protection of the image of individuals can extend to include elements not directly

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3 Judgment No. 1699/2015 published on 9 February 2015.

referable to the persons themselves, such as clothing, ornaments, and makeup that by their peculiarity immediately recall in the viewer's perception precisely that character to which these elements are now inextricably linked. An example is Osimhen's mask.

In the sports' environment, particularly in soccer, it is common for sports clubs or other companies to use professional images through the exploitation of image rights. Such exploitation has nothing to do with sports' performance by a labor contract, and from a contractual point of view, a specific agreement is required, which in Italy has also seen the involvement of the AIC – Associazione Italiana Calciatori (Italian Footballers' Association) as the exclusive concessionaire of the use of the portrait, name, and pseudonym of associated footballers and within the limits of association purposes.

Precisely, art. 26 of the social statutes of the AIC stipulates that membership entails the automatic granting to the latter of the rights to the exclusive use of the portrait, name, and pseudonym of its members in connection with the professional activity carried out by them and the creation, marketing, and promotion of products that are the subject of collections or otherwise products that, due to their characteristics, make it necessary to use the image, name or pseudonym of several footballers and/or teams.

These are the so-called collective products, which do not require the consent of the registered soccer player. The AIC, moreover, will be able to exercise these rights freely and the economic proceeds from their exploitation will be destined for welfare or mutual aid purposes in respect of all members, as well as for the realization of social purposes.

Of course, the player is free to negotiate the exploitation of his image rights with other parties, which considering technological innovation, is increasingly being applied, and the decision not to monetize the image is the exception.

In Italy, since 1981, when employment contracts were introduced in soccer, it has become common to include specific clauses in contracts signed between club and player regarding the exploitation of the sportsman's image.

In principle, however, we can say that to market a person's image, it is essential to obtain his or her consent, which is a fundamental requirement and limitation of the commercial use of the image and is of paramount importance in entering into sponsorship contracts, in which an athlete grants the right to use his or her image to advertise services and products.

The person may decide to grant the use of the image to certain parties but deny it to others, or to grant it exclusively for specific purposes or uses.

What matters, for the present analysis, is the gain attributable to the athlete by the lawful assignment of his or her image rights and how it is taxed relative to other items of income.

The Cristiano Ronaldo affair in the Juventus team and the tax relief he legitimately benefited from

In the summer of 2018, Cristiano Ronaldo joined the Football Club Juventus's ranks, and the champion's salary level forced his advisors to study the tax issue carefully.

How much and what taxes would Cristiano Ronaldo have to pay into the Italian state treasury? Few if compared to ordinary taxation and this is thanks to the 2017 Stability Law (*Legge di Stabilità*) still in force, which guarantees all those who move to Italy or have not maintained tax residence in Italy for 9 of the last 10 years, a particularly advantageous substitutive tax.

For all income that was not declared within the Italian borders, Cristiano Ronaldo could have paid a lump sum of € 100,000 per year. In comparison, his relatives could obtain a facilitated tax regime by paying a lump sum of € 25,000 each.

So far, so good, Ronaldo has performed his sporting activity and had no conflict with the Italian tax authorities until it came to taxing the economic exploitation of the Portuguese star's image rights, which are managed by Polaris Sports Limited, a non-Italian company. This issue was only concluded in the spring of 2023, that is, almost two years after the termination of his contract with Juventus.

The issue is the taxation of income from image rights for the period during which Ronaldo, a Juventus player at the time, was resident in Italy. In brief, Cristiano Ronaldo or, to be more explicit, his advisors also demanded with the earnings related to the exploitation of image rights the application of the regime according to which income generated abroad by a person moving to Italy can be taxed at a flat rate of € 100,000 per year. In other words: was it right to consider income from image rights as produced abroad? Others had asked themselves the same question, although not in the field of sport.

The antecedent case of the Spanish actress and the Italian tax agency

Already in 2021, with its answer to Interrogation No. 139 of 3 March 2021, the Italian Tax Agency had given its opinion on the taxation of the income we are now discussing, not in relation to a sportsman, but to a Spanish actress. Specifically, the petitioner asked to know the tax qualification of the fees relating to the transfer of image rights by the artist not resident in Italy but contractually committed in Italy, and the consequent taxation regime and whether it is possible to apply the provisions of art. 12 of the Italy-Spain Convention to the case in question.

In this statement, which is also theoretically equally applicable to sportsmen and sportswomen, the Italian tax agency was clear in stating that the remuneration paid for the transfer of image rights to an artist, even if not resident in Italy, qualifies as self-employment income if it is related to the professional service rendered in Italy by the artist.

The natural consequence is the taxation of that income in Italy since the connecting criterion, for the purposes of bringing the aforementioned emoluments within the Italian State's taxing power, is, therefore, the circumstance that the work is performed in Italy. In other words, the place of performance of the work has been privileged even though the exploitation of the rights would take place worldwide.

Further, the tax agency qualified such income as *"additional"* positive components of the self-employment income earned by the owner in the exercise of his professional activity, for the purposes of territoriality, the place of performance of the artistic or professional activity to which the income was attracted must be taken into consideration, that is, Italy (the place where the filming of the film took place), with no relevance for the place where the activity of economic exploitation of the right to the image is exercised.

This decision aroused the attention of lawyers and tax experts dealing with sportspeople since the reasoning carried out by the tax agency could also be fully applied in the sporting' sphere, and so it was.

The intricate Italian court case and the two levels of judgment that cost Cristiano Ronaldo pricy

With judgment no. 219 of 15 May 2023, the Piedmont Tributary Court of Second Instance confirmed judgment no. 278/2022 pronounced by Section 1 of the Provincial Tax Commission of Turin on 23 March 2022, in which Cristiano Ronaldo's defendants requested to ascertain the correct qualification and territorial localization of the income deriving from the exploitation of his image rights.

The player's defendant requested that the Tax Agency be ordered to repay the amount paid by way of IRPEF (personal income tax) in relation to the aforementioned income, amounting to a total sum ranging between € 3,976,248 and € 4,791,462 in the event that the income qualifications proposed in the main and residual cases were accepted.

As previously mentioned, the tax issue arose in 2021 in relation to income referable to the year 2019, after the applicant, a Portuguese citizen, during the month of July 2018, began a new employment relationship with the football club Juventus Spa, a company resident for tax purposes in Italy, by the contract of employment signed on 10 July 2018. By this contract, Cristiano Ronaldo was remunerated both for the service sports' performances and for the exploitation of image rights as a player of the same club (so-called collective image rights).

The court, before motivating the decision, deemed to specify that the applicant has been a tax resident in Italy since 01 January 2019, the year in which he was admitted to the substitute tax regime on income produced abroad, pursuant to art. 24-bis of the T.U.I.R.[4] (pursuant to which, with respect to such income, a tax calculated as a lump sum is due in the fixed amount of € 100,000 for each tax period), following a favourable opinion issued by the Tax Revenue Agency.

In the proposed interpretative solution, the claimant argued that the modalities of exploitation of fame could be attributed to two different kinds of services:

a the grant of the right to exploit the image of the claimant for commercial purposes (advertising and/or promotional) through any means of communication ("image right in the strict sense") – from which would derive income assimilated to self-employment income, or other income, to be considered under Italian law as such, produced in the country of residence of the payer, in this case abroad;
b the assumption of the obligations to carry out determined or determinable personal activities involving the physical presence and availability of the taxpayer's time ("executive activities"), for which the claimant proposed its classification: – as income assimilated to employment income, to be considered, as such, as produced in the territory of residence of the person paying the remuneration, in any circumstances abroad.

In this way, Cristiano Ronaldo claimed to pay no further tax than the already mentioned sum of € 100,000 per year.

The Tax Revenue Office rejected the interpretative solutions put forward by the applicant and ruled that the entire amount of the income received and to be received by the claimant in connection with the exploitation of the economic rights connected with his image, including all ancillary services, should be classified as self-employment income, pursuant to art. 53, 1 of the T.U.I.R.; – as to territoriality, in the sense of the relevance of the place where the activity (in Italy or outside Italy) was carried out in connection with the management of the image rights of Cristiano Ronaldo.

This was followed in the months by other applications aimed at understanding the position of the Tax Agency and, in 2021, the footballer appealed before the Provincial Tax Commission of Turin. In particular, he mainly argued that such income should be considered as proceeds of the economic exploitation of image rights in the strict sense, as an *"intangible right"* such as intellectual works producing an income, assimilated to self-employment.

The Provincial Tax Commission of Turin rejected the taxpayer's appeal, stating that it did not agree with the view that the income in question, deriving from the exploitation of the right to the image, could be classified as either income from intellectual works, business income, or miscellaneous income. According to the trial court, in fact, such income was classifiable as real income from self-employment, adding that, in the absence of proof to the contrary (which the taxpayer had not provided), it had to be considered to have been generated in Italy. The first instance judges concluded, therefore, that the substitute and favourable tax regime under art. 24bis T.U.I.R. was inapplicable with respect to that income.

4 The T.U.I.R. is the Italian Income Tax Consolidation Act and is the standard on which the entire decision is essentially based.

The complexity of the issue at stake was so evident that the court considered it appropriate to set off the costs of the proceedings between the appellant and the Tax Agency.

Cristiano Ronaldo appealed against this decision in June 2022, and the second instance ruled as follows. The court of the second instance firstly held that it was not possible, contrary to the player's contention, to bring the income derived from the exploitation of the player's image in question into the category of income derived from the economic use, by the author or inventor, of intellectual works. The court stated that it is indeed true that image rights constitute an intangible right belonging to the personal and exclusive sphere of the individual, but this certainly does not entitle one to equate it, from a tax point of view, with property rights.

It is indeed self-evident that the image that is the subject of the right in question, which is certainly a harbinger of commercial exploitation, is in no way the product of an intellectual work (having a completely independent life concerning its creator), constituting instead a personal quality of the person concerned that, far from having its total autonomy concerning its owner, is strictly dependent.

On the contrary, the image right is inseparably connected to his person (be he an actor, a singer, a sportsman, or any other well-known person for any reason whatsoever) and is endowed with its economic value precisely in proportion to the "fame" acquired from day to day by the subject in question, both thanks to the activities he performs and thanks to his ability to present himself in the media as an interesting character (also commercially). The court, therefore, specified that the income in question must be classified as self-employment.

It should be noted that, whilst it is true that the character's notoriety originates also from the sporting career classified as salaried employment, it is not negligible that the management of the image right is carried out by the player with the requirements of habitually and professionalism laid down by art. 53, para. 1, of the T.U.I.R.

According to that provision:

"self-employment income is income deriving from the exercise of arts and professions, where "arts and professions" means the exercise by habitual, though not exclusive, profession of self-employment activities other than those falling under business income."

The court considered it important to point out that, in the modern globalized world, the notoriety of public figures, even if originating from some specific artistic or professional activity, now depends to a much greater extent on the ability of the person concerned to promote his or her character, in a professional manner, in the mass media, thus making it an attractive product.

This also applies to those who have attained that "fame" thanks to particular performances of a sporting, televised, cinematographic, or artistic nature rendered by them in the course of their lives.

The distinction between the "image" of those personalities, which can be commercially exploited, and the professional activities that have made them famous appears particularly evident in the case where those same activities have ceased at a certain point, for the most varied reasons, for example, in the case of footballers, they have stopped playing for age reasons, and nevertheless, the holder of the right has maintained personal visibility susceptible of economic exploitation and, therefore, independently forging an income.

Thus, the habitual and professional exercise of the management of that image renders the qualification of the income deriving therefrom as coming from a self-employed activity evident.

Contrary to the assertions of Cristiano Ronaldo's defence, according to the court, this provision is undoubtedly also applicable to the case at hand, as there is no need to confuse the legal framework of the sporting employment relationship, from which the notoriety of the person "C. R." originates, with the "image" acquired by him not only as a result of those work services, but also thanks to his ability to appear and present himself in the world of communication as an "interesting" subject, and, therefore, usable for promotional and commercial purposes.

The court also demolishes the assumption that the income qualifies as having been generated abroad because the player would be under an obligation to serve the foreign payer.

According to what the court has affirmed and already indicated by the revenue agency, a new method of exploitation of the right of image is found where, in the concrete performance of the activity, the traditional moments of acting are substantially de-structured and co-present: whereas before the advent of social networks, the so-called testimonial was called by the sponsor or however required to perform the obligation at a given time and place, for example, the photo shoot on an agreed day and place, to then allow the exploitation of the image at a later stage.

Today, it is possible to channel the activity of the obligation directly and immediately onto the social pages of the celebrity or the client, pages, and sites that allow the advertising/promotional message to be used almost anywhere, in real-time, directly viewable on the user/consumer's device. In this context, the obligation, linked to the economic exploitation of image rights, is pulverized, since it is not possible, even if one wanted to analyze and distinguish the promotional message, to be traced back to a defined territory of exploitation of the same, being a virtual world.

Moreover, it is undisputed that such rights had been assigned cumulatively in 2014, originally until 31 December 2020, to entities resident for tax purposes in the British

Virgin Islands, for an all-inclusive consideration, paid in advance and collected in a lump sum, of approximately 60 million, in exchange for the obligation, on the part of Cristiano Ronaldo to grant the exploitation of his image and to undertake to carry out a series of related ancillary activities, making himself available for a certain number of days in the place and time agreed with each party that acquired the right to use the appellant's image.

The two companies had, in turn, assigned to another company resident for tax purposes in Ireland, a license to use and exploit all rights connected to the image and personality of the player. The latter company is indeed professionally involved in the management of numerous sportsmen and women.

Subsequently, because of the economic imbalance for the taxpayer of the services contained in the agreements mentioned above, the contractual parties had agreed to terminate them early with effect from 30 June 2019. Therefore, as of 1 July 2019, the rights relating to the economic exploitation of the image returned to the full legal availability of Cristiano Ronaldo and were directly entrusted, on behalf of the same, to the administrative and commercial management.

Therefore, it does not seem to be admissible according to which the claimant would not carry out any act of management of its image rights, given that the new contractual arrangement entails, de facto, the performance by Cristiano Ronaldo of various activities which include, undoubtedly, the authorization phase (also including the assessment of the convenience and terms of the agreement) as well as the execution of the contracts for the exploitation of the rights related to his person.

At the end of this legal journey, what remains undisputed is that, according to the orientation of the Italian tax agency and the tax jurisprudence, if the player is resident in Italy, is contractually bound to an Italian club and manages, even in part, the monetization of his image rights, he will have to pay taxes in Italy as a self-employed person, even if the paying company is abroad.