

Asset protection for internationally successful athletes

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Imagine a talented sportsperson who has just signed a lucrative contract with a well-known Italian football club. The contracted income is high, leading to the accumulation of considerable assets for the sportsperson. But at the same time, successful and high-earning sportspersons are at a special risk of losing some or all of their assets again. Boris Becker is just one prominent example. How can internationally successful athletes protect themselves in this regard?

There are many reasons for such asset losses, including:

- excessive living standards;
- luxury goods;
- bad investments;
- divorces;
- inexperience in financial matters; or
- simply disinterest or a lack of knowledge regarding asset protection.

Combined with benefits available under Italian tax law, Liechtenstein foundations are an excellent way to protect successful sportspersons residing in Italy against loss of assets over time that could threaten their livelihoods.

Reasons for a Liechtenstein foundation

The two main reasons for establishing a Liechtenstein foundation are asset protection and succession planning. The Liechtenstein foundation makes it possible:

- to secure the sportsperson's accustomed standard of living; and

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- to permanently preserve assets in order to enable future generations to enjoy a certain standard of living

But the Liechtenstein foundation also protects foundation beneficiaries from:

- financial hardship;
- access to the foundation assets by creditors;
- the financial risks of divorce;
- wasting of the assets by heirs or spouses;
- division of assets under inheritance law;
- loss of control over own company due to division of shareholders under inheritance law;
- greed of false friends and business partners; and
- any claims to a compulsory portion under inheritance law.

In addition, the establishment of the foundation allows the pursuit of further goals.

For example, it is possible to define family values that must be upheld by any descendants of the sportsperson if they are to receive benefits from the foundation. The assets of the foundation can accordingly be transferred to subsequent generations according to the wishes of the sportsperson. Alternatively, provision may be made for the foundation to be dissolved at a specific time or subject to certain conditions.

Design of the foundation

Smoothly functioning foundation governance serves to protect the interests of the sportsperson establishing the foundation. High priority should, therefore, be given to foundation governance.

The foundation is administered and managed by the foundation board, which consists of a legally qualified financial intermediary subject to regulatory supervision – such as a professional trustee – and at least one other person. In principle, the sportsperson, a person of trust, or another qualified person may be appointed to the foundation board.

To ensure that the foundation board continues to act according to the will of the sportsperson within the legal framework, an advisory board may be set up with a monitoring or advisory function.

The advisory board may also be granted the right to veto

resolutions of the foundation board or to decide who should receive how much money from the foundation and when. The advisory board may, for instance, include the sportsperson, a person of trust, or a legal advisor with whom the sportsperson is familiar.

Taxation of a foundation

From the Liechtenstein perspective, the contribution of assets to the foundation by a foreign sportsperson (e.g. residing in Italy) is tax-free.

Income from the foundation assets is, in principle, subject to the ordinary corporate earnings tax of 12.5%; certain income, such as dividends or capital gains from the sale of shares and participations, are exempt from the Liechtenstein corporate earnings tax. The minimum annual tax is CHF 1,800.

Under certain conditions, the foundation may be subject to the special taxation regime of a private asset structure, where only the minimum annual corporate earnings tax of CHF 1,800 is payable. At the same time, annual filing of a tax return can be waived.

No withholding tax is levied in Liechtenstein on subsequent distributions by the foundation to the sportsperson or beneficiary family members. As a result, the taxation of a Liechtenstein foundation could turn out to be extremely attractive – as it does in many other cases – where it is combined with a special tax regime, such as the Italian substitute tax regime.

Substitute tax regime for individuals transferring their residence to Italy

In 2017, Italy introduced a special substitute tax regime (or “forfeit tax regime”) for individuals, such as sportspersons and artists, who transfer their tax residence to Italy. This regime is meant to attract high net worth individuals to Italy. If the conditions for the substitute tax regime are met, the following advantages apply:

- all foreign-source income and gains are subject to a substitute tax in lieu of the regular personal income tax equal to € 100,000 per year; such income and gains are not subject to any additional taxation if remitted to Italy;
- foreign assets are not subject to wealth taxes in Italy;
- foreign assets are not subject to inheritance and gift taxes in Italy;
- foreign assets are not subject to reporting obligations in Italy; and
- as an exception, foreign-source capital gains on substantial shareholdings realized in the first five years of Italian tax residence are subject to income tax according to the general taxation rules.

Therefore, during such five-year period, substantial shareholdings are subject to reporting obligations. This carving out of foreign-source capital gains on substantial shareholdings realized in the first five years is a specific anti-avoidance rule; this means that, depending on the specific facts and circumstances, the taxpayer may obtain a ruling on non-application of the rule

The option for the substitute tax regime is effective up to a maximum period of 15 years. The option can be revoked by the sportsperson but, if revoked, it is no longer available.

The substitute tax regime can be extended to one or more qualifying family members against payment of an annual substitute tax of € 25,000 instead of € 100,000 per family member benefitting from the regime. For instance, if two spouses transfer their tax residence to Italy and both of them wish to benefit from the substitute tax regime, the overall annual substitute tax would be € 125,000.

Conclusion

The comprehensive career planning of sportspersons also includes the professional handling of national and international tax issues as well as asset protection. Especially in the case of internationally successful top sportspersons, the early choice of the country of residence as well as knowledge of its legal framework can lead to significant differences in long-term value creation.

The Italian forfeit tax regime for individuals transferring their residence to Italy may be ideally combined with Liechtenstein asset structures for sportspersons, such as a foundation. The reason is that the Italian substitute tax regime subjects all foreign-source income and gains to a substitute tax – in lieu of the levy of income tax according to general taxation rules – equal to € 100,000 per year. Such income and gains are not subject to any additional taxation if remitted to Italy.

Moreover, foreign assets are not subject to wealth taxes, inheritance and gift taxes, or reporting obligations. The resulting benefits in terms of added value and asset protection for internationally successful top sportspersons may be significant over time.

In conclusion, the combined benefits of the Italian and Liechtenstein legal systems may be substantial for internationally successful top sportspersons.

Independently of this, Liechtenstein as a residence for such sportspersons may also represent a convincing alternative to Italy and other countries, depending on the details of the sportsperson’s situation.

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