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**Latest developments on the Italian tax treatment of "star companies"**

***Recenti sviluppi sul trattamento fiscale italiano delle "star company"***

(notes to ruling no. 282 issued by the Italian Revenue Agency on 20 May 2022)

di Giorgio Vaselli - 10 dicembre 2022

**Abstract**
Recently, the Italian tax authorities issued a ruling (no. 282 of 20 May 2022) addressing, for the first time, some of the most debated tax issues concerning international double taxation of image rights structures featuring a so called "star company" incorporated outside of Italy. Such ruling decides upon the right of an Italian tax resident soccer player to deduct for Italian income tax purposes the income taxes paid in UK by his star company deemed as fiscally "interposed" in Italy; although the answer seems not conclusive in the applicant's case, the same is to be welcomed as it may contribute reducing some double taxation risks to which "star companies" are generally exposed.
**Keywords:** taxation of sportspersons, tax interposition, foreign tax credit, article 17 of double tax treaties, close connection, image rights, star companies

**Abstract**
*In una recente risposta a interpello (n. 282 del 20 maggio 2022), l'Agenzia delle Entrate affronta, per la prima volta, un caso controverso di doppia imposizione internazionale sui redditi derivanti da strutture di gestione dei diritti d'immagine note come "star companies". La risposta si pronuncia sul diritto di un calciatore fiscalmente residente in Italia di detrarre ai fini IRPEF le imposte sul reddito pagate in UK da una "star company" riconducibile a lui e considerata interposta ai fini fiscali italiani; sebbene la risposta non sembri risolutiva nel caso dell'istante, la stessa è da accogliere con favore in quanto può contribuire a mitigare alcuni rischi di doppia imposizione sui redditi a cui le "star companies" sono generalmente esposte.*
***Parole chiave:*** *fiscalità degli sportivi, interposizione fiscale, credito d'imposta per i redditi prodotti all'estero, articolo 17 delle convenzioni contro le doppie imposizioni sui redditi, "close connection", diritti d'immagine, "star companies"*

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authorities' view. - **6.** Article 17 of tax treaties: the "close connection" principle. - **7.** International trends on the tax allocation of endorsement income. - **8.** Final remarks.

**1.** In the last two years, a few Italian official guidelines shed some light on certain complex aspects concerning taxation of income deriving from endorsement activities and exploitation of image rights (in short "endorsement income") of artists, sportspersons and celebrities carried out internationally. In general, this area of international taxation is known as being controversial and sensitive and up until now it has been addressed mainly in major tax assessments and related litigations in several EU and non-EU jurisdictions.
Notably, star companies, commonly used by sportspersons and celebrities internationally, are often likely to trigger tax concerns in Italy particularly in case they lack an adequate level of substance in their State of incorporation, due to the strict approach that Italian tax authorities follow in case of tax assessments. Therefore, such corporate structures are to be carefully assessed and reviewed in case sportspersons and celebrities are planning to become Italian tax residents (lately attracted by the Italian tax incentives dedicated to high-net-worth individuals or professional sport persons relocating to Italy for income tax purposes)[1].

**2.** In ruling (no. 282 of 20 May 2022 – "ruling 282/2022"), the applicant is a soccer player, UK citizen and former UK resident, who became in 2020 an Italian tax resident (subject to Italian individual income tax on a worldwide basis). Moreover, he is the shareholder of a limited liability incorporated in UK in the past. The applicant and his mother[2] are the sole directors of a UK company.
The UK company's assets include *(i)* rights to exploit the applicant's image and the relevant endorsement rights, *(ii)* a participation representing 50% of the capital of a company incorporated under UK laws, *(iii)* several receivables deriving from loans (both interest bearing and non-interest bearing) granted to third parties or other companies participated by the UK company.
From a UK standpoint, the UK company qualifies as UK tax resident and subject therein to corporate income tax at the rate of 19% (on its worldwide income).
The applicant asked the Italian tax authorities to confirm that the UK company should not be considered as interposed (*i.e.* non existing) for Italian tax purposes. Notably, in the Italian tax authorities' view, interposed companies are disregarded and all their income is directly attributed to the shareholders *pro quota* and taxed accordingly.

1 Celebrities and sport stars often consider a relocation to Italy under the so called "new residents tax regime" (providing for a full tax exemption on incomes sourced outside of Italy and other benefits if an annual substitutive tax of EUR 100,000 is paid) or the so called "inbound workers regime" (providing for a reduction from 50% to 30%, or even 10%, of the taxable base of income deriving from working activities mainly carried out in Italy).
2 The ruling does not mention whether the applicant's mother is also a shareholder of the UK company nor her tax residency.

Therefore, the applicant also asked whether, should the UK company be deemed as interposed, he would have been entitled to deduct from his Italian income taxes (due on the UK company's income) the UK income tax paid by the UK company, in order to eliminate the international double taxation that would arise accordingly[3].
The Italian tax authorities' answer covers several critical tax issues arising from the interpretation of both Italian domestic laws and conventions for the avoidance of double taxation on income (tax treaties) and reaches the following conclusions:

(i) based on a detailed analysis of the UK company's structure and activity, the latter is to be considered as interposed for Italian tax purposes. Hence, all its income is deemed as derived by the applicant and taxed in his hands; and
(ii) in an unprecedented fashion, in order to solve the international double taxation arising in the case at issue, the applicant would be in principle entitled to deduct from his Italian income tax the UK corporate income taxes paid by the UK company; however
(iii) the foreign tax credit would apply only provided that the endorsement income taxed in UK in the hands of the UK company (and attributed to the applicant in Italy) qualifies as an income sourced in UK having regard to the Italy-UK tax treaty.

With regard to the last point, the tax authorities' answer does not seem conclusive in the applicant's case since there is no evidence that endorsement income was actually sourced in UK rather than Italy. On a general note, the last aspect is probably the most delicate and controversial one as it requires a very detailed analysis of the sponsoring / endorsement agreements signed by the sportspersons / celebrities (or their star companies) and a factual analysis of how such activities are effectively carried out by the latter.
The next paragraphs focus on the key contents of the ruling and their main implications from an international tax planning perspective involving Italy (as presented above).

**3.** As mentioned, ruling 282/2022 provides for a detailed factual analysis of the key features of the UK company and its role played in the exploitation of the image rights of the applicant (a soccer player performing in Italy). Notably, the UK company has been assessed on several grounds (from an Italian tax angle): its governance, its business activity effectively carried out, the legal nature of its assets and, finally, the type of income derived from its activity and investments.
In the authorities' view, the UK company lacks an adequate level of organization in UK and its governance is essentially in the hands of the applicant and his mother; moreover, its investment activity is considered as "not clearly defined" because, apart from the exploitation of the applicant's image rights which yields most of the annual

3 The case description summarized in the ruling does not clarify the source of such endorsement income.

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revenues effectively collected[4], its other investments (*e.g.* loans and shareholdings) and related income are deemed as ancillary activities (hence not relevant in the analysis of the substance of the UK company).
For all these reasons, the UK company is not considered a separate economic subject with respect to the applicant since it does not appear to have an autonomous and significant function that would make it capable of possessing income[5]. In other words, the UK company structure is considered as redundant for Italian income tax purposes.
In the Italian tax system, the concept of "interposed person" stems from a provision concerning tax authorities' assessments of income taxes, pursuant to which the taxpayer may be attributed the income formally derived by other subjects when there is evidence (or there are qualified presumptions) that it is the effective owner of such income (see article 37, paragraph 3 of Presidential Decree no. 600/1973: «*In sede di rettifica o di accertamento d'ufficio sono imputati al contribuente i redditi di cui appaiono titolari altri soggetti quando sia dimostrato, anche sulla base di presunzioni gravi, precise e concordanti, che egli ne è l'effettivo possessore per interposta persona*»).
Over the years, such provision has been widely interpreted by the Italian tax administration and the tax courts which emphasized its far-reaching scope. For instance, according to a tax authorities' resolution of 2001 (no. 99/E) concerning tax repatriation of foreign capitals and investments, a company located in a country with a low level of taxation (compared to the Italian one), not subject to any obligation to keep accounting records, should have been treated as interposed if its corporate structure appeared to be merely formal and its assets were attributable to the shareholder(s) based on a substance over form approach.
Subsequently, in a circular of 2016 (no. 6/E) focused on buyouts and international investment schemes generally used in the private equity sector, the tax authorities deemed interposed for tax purposes both "conduit entities" and "artificial conduit schemes". In detail, a conduit is an entity which, among others: *(i)* has light substance (in terms of staff and premises[6], *(ii)* does not conduct an effective business and *(iii)* has no real decision-making process in relation to its investments[7]. An artificial conduit scheme is a pass-through financial structure whereby cash-in and cash-out agreements are substantially structured as back-to-back agreements (with mirroring main characteristics such as duration, payment terms, etc.).

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4 The revenues accounted for in the P&L accounts were disregarded since, as declared by the applicant, were not actually cashed in by the company.
5 Pursuant to article 3 and 72 of the Italian income tax code (Presidential Decree no. 917/1986) possession of income is the preliminary condition for applying Italian individual and corporate income tax respectively.
6 *E.g.* space, personnel and other facilities are provided by a service provider under a management service agreement.
7 *E.g.* when the management plan of the investment is determined advance and the company merely implements it.

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More recently, in a ruling of 2020 (no. 89), the tax authorities deemed as interposed an Italian limited liability company having as controlling shareholder and sole director the same natural person and carrying out as its main business activity the same corporate management services (to unrelated companies) that were initially carried out by its sole director on a personal capacity. Such corporate structure was deemed as redundant and mainly aimed at minimizing the Italian income tax arising from the activity carried out (since corporate income tax was substantially lower than individual income due in case the same services were carried out by the controlling shareholder)[8].

Finally, a ruling of 2022 (no. 274) concluded that a limited partnership set up in the Cayman Islands by several fund managers (as limited partners), including one resident in Italy, was not interposed with regard to the latter since the entity was managed by a general partner other than the limited partners, it acted as a co-investment vehicle of the abovementioned managers and part of its income was retained to cover general corporate expenses. Remarkably, in this case the tax authorities did not consider the lack of offices, personnel and any legal obligation to prepare financial statements as relevant elements to treat the Cayman entity as fiscally interposed.

Regrettably, as time passes by, the tax authorities' approach summarized above remains often questionable and confusing for taxpayers. Supposedly, for excluding an interposition relevant for tax purposes, these guidelines seem to consider the following circumstances as conclusive: *(i)* the entity is set up as a co-investment vehicle of a plurality of stakeholders, *(ii)* the shareholders are not entrusted with the day-by-day management functions of the entity, and *(iii)* the entity shows an effective interest in carrying out its investment activities. In those cases, a lack of staff and premises seems not problematic at present but a case-by-case analysis is always needed[9].

**4.** Ruling 282/2022 confirms that, being the UK company fiscally interposed, the Italian resident shareholder (*i.e.* the applicant) is in principle entitled to deduct the UK corporate income tax paid by the UK company from the Italian individual income tax due by him. It is well known that Italian tax residents can eliminate international (juridical) double taxation on their income (determined on a worldwide basis) through

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8 This ruling was strongly criticized by practitioners and scholars who, among other, pointed out that such structures do not trigger an effective tax saving for the controlling shareholder (rather a tax deferral only which is not in contrast with applicable laws).

9 It is noteworthy to mention that the Italian case law on interposed entities is particularly broad and encompasses a wide range of investment schemes and business sectors, including sports and entertainment. A decision of the Italian Supreme Court of 2016 (no. 27112) concerning holding companies' entitlement to double tax treaties (as beneficial owners of dividends distributed by an Italian subsidiary), upheld that the latter may have minimal structures, in terms of physical infrastructures and employees. Notably, in the Court's view, a fiscal interposition would arise in case there is a lack of autonomy *(i)* in the management decisions concerning the assets held by the holding company, and *(ii)* in the control and use of the income derived by the holding company.

the so-called "ordinary" credit method (see paragraph 16 of the OECD commentary on article 23 A and B)[10].

Remarkably, the Italian tax authorities move past a consolidated interpretation of the domestic provisions on the foreign tax credit pursuant to which, in a nutshell, Italian income tax could be reduced only by foreign income taxes paid (on a final basis) by the same taxpayer on the same income. Notably, before this ruling there was no official indication that, in case of an interposed entity, the foreign income tax qualified as paid by the same person (*i.e.* the shareholder).

This conclusion is unprecedented and ground-breaking for several reasons. Prospectively, it may allow taxpayers easing a rather complex form of international double taxation arising anytime a foreign company is treated as fiscally interposed in Italy and as a taxable person in its State of residence. Moreover, it may bridge the gap between the tax consequences suffered by Italian resident controlling shareholders of an interposed entity (generally exposed to the abovementioned double taxation) and an entity falling within the scope of Italian controlled foreign companies rules[11].

This notwithstanding, the ruling makes it clear that, in the applicant's case, the foreign tax credit would be available only if the UK company was taxed in UK on an income sourced therein.

Notably, according to the general guidelines on the foreign tax credit, if there is an applicable tax treaty between Italy and the foreign State involved, an Italian resident is entitled to the foreign tax credit in so far as that foreign State applies its income tax pursuant to the provisions of said tax treaty (see circular no 9/E of 2016). In other words, Italian foreign tax credit is not granted in case, pursuant to the applicable tax treaty, the foreign State was not entitled to apply its income tax on the income concerned. In fact, in such case, the double taxation should be eliminated by the foreign State rather than by Italy (as residence State). Conversely, lacking an applicable tax treaty, an Italian resident is entitled to the foreign tax credit if the income is deemed as sourced abroad pursuant to Italian domestic laws.

In such complex scenario where domestic and international tax rules and related guidelines overlay, ruling 282/2022 reads that "*pursuant to article 17 paragraph 2 of the Italy-UK tax treaty*", endorsement income "*closely connected*" with the professional performances carried out by the applicant within the Italian territory is

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10 Exceptionally, Italy allows tax exemption on foreign income (*e.g.* the so called "branch exemption regime", pursuant to article 168-ter of presidential Decree no. 917/1986).

11 Pursuant to controlled foreign companies rules (CFC rules), the Italian resident shareholder, taxed on the foreign company's income on an accrual basis (if certain thresholds are exceeded), can in principle deduct foreign corporate income taxes paid by the latter pursuant to the standard foreign tax credit rules. This is particularly important in the case of the UK company that, subject to a 19% corporate income tax, arguably did not qualify as a controlled foreign company under Italian laws (pursuant to article 167 of Presidential Decree no. 917/1986). However, it is worth mentioning that while under the CFC rules the Italian resident shareholder can in principle benefit from a foreign tax credit on all foreign income taxes paid by the CFC (including third States), in the case of ruling 282/2022 only UK income taxes on UK-source income are in principle creditable against the applicant's Italian income taxes.

deemed as sourced in Italy. Therefore, in the tax authorities' view, UK corporate income tax applied to income "closely connected" with the Italian performances of the applicant would not qualify for the Italian foreign tax credit purposes. It is evident that the case at issue deals with the controversial issue of the elimination of international double taxation arising from the provision of article 17, paragraph 2 on star companies (see SCHAFFNER E., *Domestic attribution of income and taxation of international entertainers and sportspersons - Theory and Practice of Art. 17 OECD Model Convention*, IBFD, 2017, 63).
In order to shed some light on the approach followed by the tax authorities, article 17 of the Italy-UK treaty and its interpretation provided for by the OECD's commentary should be expanded, starting from the tax treatment of star companies.

**5.** Pursuant to paragraph 2 of article 17, «*Where income in respect of personal activities exercised by an entertainer or an athlete in his capacity as such accrues not to the entertainer or athlete himself but to another person, that income may […] be taxed in the Contracting State in which the activities of the entertainer or athlete are exercised»*[12].
The OECD's commentary on article 17 clarifies that this provision assigns taxation to the source State in all situations where the income from the performance of an entertainer or a sportsperson flows to a foreign legal person (*i.e.* a star company). Lacking a provision such as the one at issue, the company's income might avoid taxation in the State of performance. Conversely, in case the domestic laws of the State of performance attribute income to the entertainer or sportsperson even when paid to the company (*i.e.* under a "look through" approach), then article 17 paragraph 2 of the treaty is unnecessary and paragraph 1 of the same article takes control (see paragraph 8 of the commentary on article 17; VOGEL K., *Klaus Vogel on double taxation conventions*, third edition, Kluwer Law international, 1997, 992; TETLAK K., *Taxation of international sportsmen*, IBFD, 2014, 57; SCHAFFNER E., id., 93; MOLENAAR D. - GRAMS H., *Rent-a-star - The purpose of Article 17(2) of the OECD Model*, in *Bulletin - Tax treaty Monitor*, October 2002, 500 and ff.). As the international literature points out, article 17 paragraph 2 does not aim at including in the scope of paragraph 1, other categories of income that would not be otherwise taxable pursuant to the latter provision (see JUAREZ A., *Taxation of entertainers and sportspersons performing abroad*, IBFD, 2016, 159).
This provision applies to both bilateral[13] and triangular[14] cases.

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12 Article 17(2) was included in the OECD MC in 1977 and has remained basically unchanged ever since, while in 1992 and in 2014 significant changes were made to the OECD commentary on article 17.
13 *E.g.* when the artiste/sportsperson is resident in one State, the star company is incorporated/established in the same State and the artiste / sportsperson performs in another State.
14 *E.g.* when the artiste/sportsperson is resident in one State, the star company is incorporated/established in another State and the artiste/sportsperson performs in a third State.

As seen in the above paragraphs, in the case of ruling 282/2022, it could be argued that article 17 paragraph 2 is unnecessary for Italy which "looks through" the UK company (deemed as fiscally interposed) and attributes all income to the Italian resident shareholder *pro quota*[15]. Accordingly, the tax authorities' straight reference to article 17 paragraph 2 could be considered as redundant, unless their intention is just to clarify that also for treaty purposes the UK company should be disregarded and the distributive rule of 17 paragraph 1 should apply for the purposes of the foreign tax credit analysis (see VOGEL K., *Klaus Vogel on double taxation conventions*, id., 991). Therefore, being Italy the State of fiscal residence of the performer and allegedly the State where athletic performances are carried out (although the ruling does not clarify this aspect), and given that article 17 paragraphs 1 and 2 of the Italy-UK treaty cover the same types of income indirectly derived by the applicant, the "close connection" principle outlined by the OECD commentary on article 17 paragraph 1 (relating to endorsement income) is determinative to establish whether the endorsement income is sourced in Italy or elsewhere.

**6.** Article 17, paragraph 1 of tax treaties (based on the OECD model) deals with the allocation of taxing power on income deriving from sports or artistic activities. Notably, income that sportsperson or entertainers derive from their professional activity carried out in a contracting State is taxable therein (in derogation to articles 14 and 15 relating to income from employment and self-employment).
Endorsement income is not mentioned by article 17 of tax treaties but clearly identified by the OECD's commentary on paragraph of that article, 1 which also sets out the "close connection" principle as follows: «*besides fees for their actual performances, entertainers and sportspersons often receive income in the form of royalties or of sponsorship or advertising fees. In general, other Articles would apply whenever there is no close connection between the income and the performance of activities in the country concerned*» (see paragraph 9 of the OECD commentary to article 17).
The above means that endorsement income could residually qualify as royalty (covered by article 12 of tax treaties) or employment income (covered by article 15 of tax treaties), depending on the circumstances. However, it is noteworthy to mention that in some tax assessments against Italian residents, the Italian tax authorities have claimed that, absent such a "close connection", endorsement income fell within the scope of article 21 of tax treaties[16]: this interpretation is shared by part of the domestic and international literature (see BIZIOLI G. - MOLOGNI G., *Profili convenzionali dei*

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15 For the sake of completeness, it is worth mentioning that income of artistes and sportspersons deriving from Italian activities paid by an Italian resident person (qualifying as withholding agent under Italian laws) to a non-Italian resident star company is deemed as sourced in Italy (pursuant to article 23, paragraph 2, letter d) of Presidential Decree no. 600/1973).
16 Such approach is clearly aimed at denying the application of the foreign tax credit pursuant to domestic rules (*i.e.* article 165 of Presidential Decree no. 917/1986): as mentioned, in such case there would be no foreign income pursuant to the tax treaty applicable to the case at issue.

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*redditi da sfruttamento dei diritti dell'immagine*, in *Corr. trib.* 2021, 4, 382; TENORE M., *Taxation of entertainers and sportspersons performing abroad*, IBFD, 2016, 149). The commentary, rather than providing for a general definition of "close connection", suggests that it «*will generally be found to exist where it cannot reasonably be considered that the income would have been derived in the absence of the performance of these* [performance] *activities*» (see paragraph 9 of the OECD commentary to article 17).
This requires a case-by-case factual analysis focussed on some key factors such as: the timing of the income-generating event (*e.g.* a payment received by a professional golfer for an interview held during a tournament) or the nature of the consideration for the payment of the income (*e.g.* a payment made to a star tennis player for the use of his picture on posters advertising a tournament in which he will participate).
Therefore, with specific regard to sportsperson, article 17 should apply whenever there is a causal link between sporting activity and the exploitation of their image. This is why one of the key aspects driving negotiations of image rights and endorsement agreements as well as international tax planning of artists and sports stars concerns the analysis of the type of connection (if any) between the endorsement activity and their professional activity.
Remarkably, the OECD commentary refers to a case comparable to the one of ruling 282/2022: «*it is frequent for entertainers and sportspersons to derive, directly or indirectly (e.g. through a payment made to the star-company of the entertainer or sportsperson), a substantial part of their income in the form of payments for the use of, or the right to use, their "image rights", e.g. the use of their name, signature or personal image. Where such uses of the entertainer's or sportsperson's image rights are not closely connected with the entertainer's or sportsperson's performance in a given State, the relevant payments would generally not be covered by Article 17*» (paragraph 9.5). Absent any explanation in the text of ruling 282/2022 (which questionably devotes only few words to such a delicate aspect), it may not be excluded that the tax authorities implicitly refer to such OECD's interpretation.
On a general note, it is still too early to have a clear understanding of the Italian tax authorities' view concerning the "close connection" principle. Although the few words of ruling 282/2022 are certainly not conclusive, they add to another one, issued in 2021 (ruling no. 139) dealing with the case of an Italian film maker doubtful whether the remuneration paid to a Spanish resident actress for her performances carried out in Italy was sourced in Italy (and taxable therein accordingly). The actress' remuneration was contractually split in two portions: *(i)* 60% as performance fees (for acting in the film) and *(ii)* 40% as remuneration for the exploitation of her image rights. The tax authorities qualified the latter as income "closely connected" with the artistic performance carried out in the Italian territory pursuant to the Spain-Italy tax treaty (rather than royalty as the applicant believed), based on the OECD commentary on article 17. Such conclusion was essentially grounded on the following arguments: *(i)* the exploitation of the artist's image was not referable to activities other than the performance carried out in Italy in relation to the film making; *(ii)* there was no

creative process whose result was autonomously remunerated; *(iii)* the apportionment of the remuneration (60% - 40%) suggested that the endorsement activity was ancillary to the professional activity.
Indeed, these recent developments can contribute solving the controversial issue of how the remuneration of artists and sportspersons arising from the exploitation of their image should allocate across the jurisdictions involved, since they provide helpful insight on the tax authorities' view and clearly have an international reach.

**7.** Internationally, not often States have provisions aimed at clarifying whether endorsement income of non-resident international sportspersons or celebrities qualifies as sourced within their territories. The main criteria are occasionally provided by the official tax authority guidelines or by domestic jurisprudence.
Several landmark cases are generally referred to for shedding some light on this issue. In the *Gasquet case* (involving a notorious French tennis player resident in Switzerland), the French tax court held that the endorsement income taxable in France should be determined by reference to the estimated time spent on French soil by the tennis player, having regard to the "exposure to the public and media" in fulfilling his obligations arising from the relevant endorsement agreements (see TA Montreuil, 10e ch, 1er déc. 2015, n. 142070; VASELLI G. - HIRSCH P., *Sponsorship and endorsement agreements of sportspersons. Recent findings on income qualification under tax treaties and territoriality rules*, in *Global Sports Law & Taxation Reports*, June 2018, vol. 9, no. 2, 22 and ff.). Similarly, the *Agassi case* in UK involved the allocation of endorsement income derived by the tennis champion through his US star company (see *Agassi v. Robinson*, High Court of Justice, 17 March 2004; Court of Appeal, 19 November 2004). Finally, the *Goosen case* in USA, concerned the different tax treatment of endorsement income arising from on-court and off-court agreements signed by the golf star (*Goosen v. Commissioner* – US. TC, 9 June 2011, 136T.C. 27; see BRAUNER Y., *Tax treaties case law around the globe*, IBFD, 2012, 230).
As for Italy, a procrastinated lack of clear guidelines for many years pushed scholars, practitioners and stars' agents to debate on the most appropriate criteria to correctly apportion endorsement income internationally, including examples such as the place where image rights were commercially used, or the place where the shooting takes place, etc.
In this context, the above mentioned ruling no. 139 contributes to the debate by requiring a factual analysis focused on where the performances effectively take place, rather than where the image rights are effectively exploited. Notably, such approach has been shortly after confirmed by another Italian ruling in 2021 (no. 700) dealing with the case of professional income of models and testimonials deriving from photo shootings performed in Italy and the subsequent exploitation of their image[17]; on such

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17 In such case, models and testimonials derived two types of remuneration: *(i)* a performance fee for attending the photo shooting and *(ii)* an endorsement income for exploiting their image rights in the

occasion, the tax authorities clearly stated that income derived by models and testimonials was deemed as sourced in Italy (*i.e.* where the photo shootings took place) notwithstanding where their image was commercially used.

**8.** On a final note, ruling 282/2022 is to be welcomed by taxpayers particularly for the innovative approach followed by the Italian tax authorities on the application of the foreign tax credit in case of foreign entities fiscally interposed (from an Italian standpoint). However, some grey areas remain since these guidelines do not seem conclusive on the applicant's international double taxation issue.
The tax authorities mention that, should the endorsement income be closely connected with the professional activity carried out by the applicant in Italy, no foreign tax credit would be available to him (*i.e.* UK corporate income taxes paid by the UK company would not be creditable against Italian individual income taxes due by him). Supposedly, in such case, the applicant should seek relief from the double taxation in UK only.
Therefore, the question arises as to whether the Italy-UK treaty could apply given that the UK company is treated as "effective" under UK laws and is disregard by Italian tax authorities (indeed, this is a large-scale issue possibly arising also in cases involving other Sates and tax treaties). In this respect, the OECD commentary on article 17, paragraph 2 (on star companies) only suggests that: «[…] *income derived in respect of the personal activities of a sportsperson or entertainer should not be taxed twice through the application of these two paragraphs*» (*i.e.* paragraph 1 and 2) and provides for some examples to achieve that goal that unfortunately do not suit the case at issue.
The international literature highlights how controversial this issue is as it derives from a conflict of allocation of income between the States involved (in this case Italy and UK) and remarks that such international double taxation may not always be solved by article 17 of the Italy-UK tax treaty (see SCHAFFER E., id., 154). Based on a proposed interpretation, the UK company should claim in UK a foreign tax credit determined with regard to the Italian income taxes ultimately paid by the applicant on endorsement income closely connected with his professional performances carried out in Italy. In other words, the UK company should apply the UK-Italy treaty as a UK resident entity whose income was taxed in Italy (as source State) pursuant to article 17 of the treaty. However, this approach is unprecedented and requires an interpretation of UK domestic laws (which is outside the scope of this article; a similar conclusion is broadly commented by SCHAFFER E., id., 178 and ff. with regard to a case partially similar to the one of ruling 282/2022).
Conversely, absent a close connection between the professional activity of the applicant and the endorsement activities, the case analysis may be equally problematic under the Italy-UK tax treaty pursuant to which, as seen, endorsement income may

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context of advertisements, for a limited period of time, and documentaries (or similar activities) with no time limits.

eventually qualify as royalty or even "other income" (under articles 12 or 22 respectively of that treaty) depending on the circumstances (see, TENORE M., *Taxation of entertainers and sportspersons performing abroad*, id., 149 and ff.). Ruling 282/2022 is inevitably unclear on the approach that the Italian tax authorities should follow in such cases (which supposedly, fall outside the applicant's ruling requests)[18].
Indeed, considering the unique features of this case, it is no exaggeration to imagine that such international double taxation issue may even require starting a mutual agreement procedure pursuant to article 26 of the Italy-UK treaty (as the OECD commentary suggests, such provision «*invites and authorizes the competent authorities of the two States to resolve by mutual agreement problems relating to the interpretation or application of the Convention and, furthermore, to consult together for the elimination of double taxation in cases not provided for in the Convention*» – paragraph 3 of the OECD commentary on article 25). In this respect, based on OECD sources, Italian records include mutual agreement procedures concerning article 17 of its tax treaties.
Moreover, in those cases involving States that have not signed a tax treaty with Italy, the same issues on international double taxation could in principle be solved by the foreign State's domestic laws only (see paragraph 11.1 of the OECD commentary on article 17).
A finishing remark on the case of ruling 282/2022: often star companies controlled by celebrities and sportspersons relocating to Italy have significant retained earnings deriving from past endorsement activities carried out outside Italy. Supposedly, their status as fiscally interposed for Italian tax purposes should in principle permit a full dividend distribution to the Italian resident shareholder (*i.e.* the celebrity or sportsperson) with no Italian tax consequences (as such retained earnings should be treated as already owned by the shareholder for tax purposes). Despite a lack of official guidelines on this delicate aspect, the findings of the ruling at issue could pave the way for achieving this additional piece of interpretation and play an important role in international tax planning for high-net-worth individuals.

## ESSENTIAL BIBLIOGRAPHY

BIZIOLI G. - MOLOGNI G., *Profili convenzionali dei redditi da sfruttamento dei diritti dell'immagine*", in *Corr. trib.,* 2021, 4, 382 and ff.
BRAUNER Y., *Tax treaties case law around the globe*, IBFD, 2012, 230

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18 From an Italian standpoint (and according to the general principle stated in ruling 282/2022), should the endorsement income qualify as royalty sourced in UK, given that article 12, paragraph 2 allows UK to apply income tax up to 8% of the gross amount of royalties, Italy should in principle grant the applicant a foreign tax credit up to that amount of UK income taxes paid by the UK company. Conversely, should it qualify as "other income" (pursuant to article 22 of that treaty), UK's taxing right should be excluded and Italy would not recognize a foreign tax credit to the applicant.

FINK R.S., LIN W., *Sergio Garcia in Victory over the IRS*, in *Journal of Tax Practice & Procedure*, 2013, 29

HAWKES J., *A tax too far? A review of some of the issues facing international sportsmen and sportswomen with regards to UK taxation*, in *Global Sports Law & Taxation Reports*, March 2013, vol. 3, no. 1

JAU M., *Star Companies in International Tax Law*, IBFD, 2007

JUAREZ A., *Taxation of entertainers and sportspersons performing abroad*, IBFD, 2016, 159

MOLENAAR D. - GRAMS H., *Rent-a-star - The purpose of Article 17(2) of the OECD Model*", in *Bulletin – Tax treaty Monitor*, October 2002, 500 and ff.

MOLENAAR D., *New Options to Restrict Article 17 for Artists and Sportsmen*, in *Intertax,* vol. 44, issue 12, 972

OFFER K., *Image rights payments are earnings: the Geovanni case*, in *Global Sports Law & Taxation Reports*, June 2019

SCHAFFNER E., *Domestic attribution of income and taxation of international entertainers and sportspersons - Theory and Practice of Art. 17 OECD Model Convention*, IBFD, 2017, 63, 93, 154, 178 and ff.

TENORE M., *Taxation of entertainers and sportspersons performing abroad*, IBFD, 2016, 149 and ff.

TETLAK K., *Taxation of international sportsmen*, IBFD, 2014, 57

VASELLI G. - HIRSCH P., *Sponsorship and endorsement agreements of sportspersons. Recent findings on income qualification under tax treaties and territoriality rules*, in *Global Sports Law & Taxation Reports*, June 2018, vol. 9, no. 2, 22 and ff.

VOGEL K., *Klaus Vogel on double taxation conventions*, third edition, Kluwer Law international, 1997, 991, 992