Fdez-Burgos
Mapelli
Cabello
Abogados

REPORT ISSUED IN THE INTEREST OF THE BOARD OF DIRECTORS OF THE ALOHA SPORTS CLUB ASSOCIATION

Working team

José Antonio Fernández Ramírez
Iván Porras Cívico

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Fdez Burgos - Mapelli – Cabello, SL. Abogados y Asesores Fiscales
CIF B-92117258 Duquesa de Parcent 8, 1º. 29001 Málaga
Tel 952 221996. Fax 952 216102. jafernandez@fmclegal.com

I. BACKGROUND

The Aloha Golf Club Sports Association (hereinafter, the Club) is a private non-profit sports association, registered in the Register of Sports Associations and Federations of the Regional Government of Andalusia, with registration number 4.103, dedicated to the promotion and development of physical and sporting activities, especially golf. The association has its registered office and facilities in Nueva Andalucía, Urbanización Aloha Golf, Marbella (Málaga).

On 31 March 2025, the Club received notification of the commencement of tax inspection proceedings in relation to its Corporate Income Tax returns (hereinafter, CIT) for the financial years 2020 to 2023. At the date of issue of this report, the inspection proceedings are still ongoing and the file has not yet been disclosed.

The body in charge of the procedure is the Regional Inspection Unit of Granada (hereinafter, the Inspection), as the inspection proceedings are part of a specific inspection plan aimed at verifying compliance with CIT regulations by non-profit associations. Specifically, the Board of Directors of the Club and the professionals who have signed this report are aware of other non-profit sports organisations that have been inspected, or are currently being inspected, by this same Inspection body.

The main reason for this inspection plan is that many non-profit associations have historically declared their income as exempt from CIT, on the understanding that it comes from partnership-sporting activities without a profit motive, without stopping to analyse in depth other factual circumstances that could give rise to non-exemption in the area of CIT. In this regard, there has been no significant conflict with the tax authorities in this area to date, but rather a certain acquiescence with regard to the tax obligations of non-profit associations.

In essence, the special CIT regime was being applied incorrectly by most sports associations, posing a real generalised tax risk in the sector.

In this regard, the professionals who have signed this report issued a legal opinion on 1 June 2021 at the request of the Club's Board of Directors, the main conclusions of which were:

1. The Club carries out an economic activity for the purposes of Article 5.1 of the CIT Law (hereinafter, CIT Law).
2. Regular membership fees and other income received by the Club are not exempt from CIT, as they confer the right to receive a benefit derived from the aforementioned economic activity.
3. We expressed our doubts about admission or membership fees, since, on the one hand, there is no direct compensation associated with their payment, but on the other hand, they are logically used to finance the activity carried out by the Club.

Given the uncertainty in this regard, we recommended submitting a binding ruling to the General Directorate for Taxation.

This report is issued at the request of the Club's Board of Directors, in order to highlight the current status of the Inspection file and convey our professional opinion.

II. COPORATE INCOME TAX FORMS FROM ALOHA CLUB ASSOCIATION

As the Club does not have the administrative recognition as a "public utility entity", in the area of CIT and in accordance with Article 9, paragraph three of the CIT Law, the Special Regime for Partially Exempt Entities regulated in Chapter XIV of Title VII of the same legal text is applicable.

The Club's CIT returns subject to the inspection file present the following main figures:

	2020	**2021**	**2022**	**2023**
Accounting result before CIT	576.204,84 €	836.409,36 €	-467.956,29 €	-1.007.154,39 €
Positive CIT adjustments	3.216.566,53 €	3.744.198,83 €	25.096,00 €	22.020,00 €
Negative CIT adjustments	3.739.598,55 €	4.530.571,44 €		
CIT taxable base	53.172,82 €	50.036,75 €	-442.860,29 €	- 985.134,39 €
Entry fees	537.000 €	1.025.000 €	831.000 €	1.316.000 €

As it can be appreciated, there are significant differences between the CIT returns for financial years 2020 and 2021 and those for the 2022 and 2023, mainly due to the following reasons:

1. During the 2020 and 2021 financial years, the Club assumed that the income it obtained was fully exempt from CIT, as it considered that it did not carry out an economic activity as such.
2. During the 2020 and 2021 financial years, the Club considered that both ordinary fees and admission or membership fees constituted accounting income and were tax exempt from CIT.
3. In its tax returns for the 2022 and 2023 financial years, the Club changed its criteria with regard to the exemption of its activity from CIT, assuming that it carried out an economic activity and that the ordinary fees paid by its members were income subject to CIT.

4. With regard to admission (membership) fees, in the 2022 and 2023 financial years, the Club considered that these were eligible for exemption from CIT, as they were not considered to be a payment in return for a service, but rather an essential requirement for joining the Association, with the ordinary fees being what actually gave members the right to enjoy the services offered by the Club.
5. In accounting terms, this payment is considered a contribution by the member to the Sports Association's equity, a criterion that was ratified by the auditors in both the 2022 and 2023 financial years.

The criteria followed during the 2022 and 2023 financial years with regard to the accounting of entrance fees is based on:

(i) The objective of the Club's Board of Directors has always been that ordinary activities should be financed through regular fees, visitor green fees and other recurring income. Entrance or membership fees were used to finance improvements and investments in the golf course and its facilities, as reflected in the periodic reports issued by the Club's financial advisors.

(ii) The Club's annual budgets, which are included in the audited Annual Accounts, set out income and expenditure forecasts whereby the Club's operating activities are financed exclusively by regular fees and other accessory income (green fees, rentals, time shares, competitions, etc.). In other words, the annual budgets do not provide for the use of entrance fees to finance the Entity's operating activities.

(iii) Article 12 of the Club's statutes clearly states that payment of the entrance fee is a requirement for acquiring membership, but does not grant any right *per se* to play golf, as the bylaws themselves and the Internal Regulations stipulate that periodic fees must be paid in order to enjoy the Club's services.

(iv) There is no clear consideration derived from the payment of the Club membership fee for the member who pays it.

The adoption of the criteria set out in the annual CIT returns has meant that the Club has obtained a reduced or negative tax base, which in practice has meant that during the financial years 2020 to 2023, as in previous financial years since its incorporation, CIT has been zero or very low.

III. INSPECTION CRITERIA ON ENTRANCE FEES

The notification of the start of the Inspection clearly specifies the intention to check in detail 'the entrance and membership fees' paid by the members, so in addition to the

accounting books, statutes and internal regulations, it requests 40 membership documents from new members.

After analysing the documentation provided by the Club, the Inspectorate has reiterated on several occasions its criteria regarding CIT for the financial years under review:

1º On the existence of economic activity

There is no doubt that the Club carries out an economic activity, having the human and material resources to organise the practice of sport at its facilities on its behalf. Likewise, the Inspectorate substantiates and confirms that the Club itself has filed its tax returns for the 2022 and 2023 financial years on the assumption that an economic activity exists.

As an economic activity exists, the Club's income is not exempt from CIT, in accordance with Article 110 of the CIT Law. Similarly, the association's expenses are deductible for CIT.

2º On the classification of membership fees as income or net assets

In this regard, the Inspectorate argues that membership fees are considered income for accounting purposes in all cases, and cannot be directly attributed to the Association's net assets. Its argument is based on the following points:

- Principle of "accounting uniformity": the Club itself has historically considered membership fees to be income until the 2022 financial year. Furthermore, there has been no change in factual circumstances that would justify the new criterion of no longer considering them as income for the financial year: the admission document has not changed, nor have the statutes.

- Accounting regulations require membership fees to be considered accounting income (for the financial year or spread over several financial years), not net assets. The only contributions that should not be recorded as accounting income are those that clearly constitute an allocation to the Club's social fund.

- Admission fees are not social funds/allocations: in order to be considered as such, the admission document would have had to be amended so that they would no longer be referred to as 'fees', the statutes would have to be changed and a number of other formal requirements would have to be met.

- Admission fees are not only used to finance the Club's non-current assets, but also to finance its ordinary activities.

- The Inspection understands that the consideration received by the member upon payment of the admission fee is the acquisition of the right to use the Association's assets and enjoy its services.

3º On whether or not membership fees are exempt from CIT

Before analysing the taxation of membership fees, it should be noted that the accounting classification of such contributions as 'income' or 'net equity' does not necessarily mean that they are classified as 'taxable' or 'exempt' for CIT purposes. In other words, it is possible to argue that the most appropriate accounting treatment for this type of contribution is to consider it as net equity and, at the same time, maintain that it is subject to CIT, on the understanding that such fees involve compensation or are used to finance economic activity. Similarly, it is also feasible to account for the fees as accounting income and, at the same time, argue that they are exempt from CIT, on the understanding that the aforementioned requirements are not met.

Having clarified the above, in the tax sphere, the Inspection considers that the entrance fees received by the Club are not exempt from CIT because:

- For years, the General Directorate for Taxation has been issuing binding rulings on the subjection to CIT of all membership fees that involve the provision of a service and those used to finance the performance of an economic activity. Some more recent binding rulings, such as V1107-24 of 22 May 2024, are more explicit about the taxation of entry fees used to finance the activity.

- The Inspection asserts that the Club regularly uses membership fees to finance its ordinary activities. On this point, the Inspection refers to the amount of the association's non-current assets (<0.5M) and to the fact that the operating deficit for the financial years 2022 to 2024 is offset by the membership fees received:

	2024	2023	2022
Operating profit CIT:	-1.478.137,58	-1.085.426,72	-517.110,37
Entry fees:	1.314.667	1.316.000	831.000

On the basis of the latter, the Inspection concludes that the association uses the amount of the entrance fees to finance its economic activity, since the periodic fees and other recurring income do not cover all operating expenses.

- Apart from the issue of financing the activity, the Inspection also argues that there is indeed a compensation for the payment of membership fees, as this is a necessary condition for accessing the association's services.

4º Club alternatives for the completion of the administrative procedure

Currently, within the administrative file, the possible courses of action are to agree with the thesis defended by the Inspection, which would mean paying tax on the total income (including membership fees) and paying the resulting tax plus interest for late payment (approximately €62,500); or expressing disagreement, in order to pursue economic-administrative procedure and leave the judicial route open.

The CIT payable resulting from a regularisation that considers the entry fees to be non-exempt would be as follows:

	2020	**2021**	**2022**	**2023**
Taxable Base Inspection	576.204,84 €	836.409,36 €	388.139,71 €	330.865,61 €
Unpaid quota	**130.758,00 €**	**196.593,15 €**	**97.034,93 €**	**82.716,40 €**

If the Club opts to agree with the thesis defended by the Inspection, it would regularise its tax situation for the 2020 to 2023 financial years, which could not be subject to a new inspection. In this way, the rest of the accounting and tax criteria followed by the Club would be approved by the Inspection, which is a very important aspect in the opinion of these professionals.

Furthermore, given the difficulty in interpreting some of the points in the file and the fact that there are circumstances that are not easy to assess, if the Club were to agree, the inspection file would be closed without any penalties being imposed. On the other hand, agreeing with the Inspection's position would mean waiving the right to appeal the assessment before the higher authorities.

If the Club chooses to disagree, in addition to the unpaid tax and interest for late payment, it would face a penalty imposed by the Inspection, the amount of which is not

currently determined. Based on the circumstances of the case, these professionals believe that the penalty imposed could be in the range of €90,000 to €135,000. In order to justify the imposition of a tax penalty, the Inspection would have to draft the report in such a way as to highlight the Club's culpability and that its conduct was unreasonable from a tax point of view.

IV. OUR CONSIDERATIONS

1º Regarding the Club's actions:

In our opinion, the criteria used to calculate CIT for the 2022 and 2023 financial years are based on a completely reasonable interpretation of tax regulations and are in line with the principles of due diligence. A relevant aspect for the inspection is the change in criteria regarding the consideration that there is indeed a genuine economic activity in the field of CIT.

With regard to the previous financial years subject to inspection, as we mentioned in the Background section, there was a general trend in the sector to consider that the practice of sport at a sports club did not constitute an economic activity, which is why many associations understood that their activity was exempt from CIT. As we said, we are facing a real risk for the sector in the area of CIT, which the current inspection plan aims to correct.

2º Regarding the inspection criteria:

Our opinion is that some of the statements made by the Inspection during the proceedings are refutable and that their ultimate aim is obviously to tax membership fees for revenue purposes. For example, it is not clear that there is any compensation associated with the payment of the entrance fee, nor that all contributions from members should be accounted for directly as income for the financial year. Similarly, justifying the accounting adjustment on the basis of the lack of use of the term 'social fund' in the statutes and other documentation is, in our view, formalistic and strict. The lack of terminological references to the 'social fund' should not obscure the true economic and legal nature of membership fees as contributions to the Sports Association's assets.

On the other hand, based on the factual circumstances shown by the budgetary reality of recent financial years, we understand that it would be difficult to argue that the Club does not use all or part of the entrance fees to finance its economic activity. However, it should not be forgotten that the above corresponds to an administrative criterion repeatedly expressed by the General Directorate for Taxation, subject to review by the courts of justice.

V. CONCLUSIONS

As we announced in our report of 1 June 2021, the definitive interpretation of the taxation of membership fees is a matter of fact that can be judged on a case-by-case basis depending on the circumstances (statutes, admission documents, financial situation of the association, etc.), and on which there is currently no established case law.

In any case, as explained in the Background section of this report, we are faced with a tax risk inherent to the sector. Fortunately, the Club was able to react in a timely manner and reduce this risk by recognising that the activity carried out was of an 'economic nature' for the purposes of the CIT Law, and consequently modifying its operations in relation to income tax, with the sole exception of membership fees, the special nature of which has already been pointed out.

Similarly, the fact that there is a possibility of concluding the inspection with an assessment signed in agreement without the imposition of a penalty, which is unusual, confirms that the Board of Directors has acted diligently in this area.

From our point of view, the main arguments for opting for compliance are that (i) the Inspection would endorse the rest of the accounting and tax criteria followed by the Club in the financial years audited (ii) and that the assessment would be more favourable in relation to the actions taken by the Board of Directors; (iii) on the contrary, it would mean waiving the right to appeal the settlement in the following instances.

In our opinion, the main arguments in favour of non-compliance and the resulting appeals until all legal avenues have been exhausted, where applicable, would be (i) the high probability of having the penalty imposed overturned and keeping alive the possibility of having membership fees accepted as exempt from CIT, both in relation to the assessments under review and in the future; (ii) although the wording of the assessment of disagreement would be more aggressive in terms of the Club's conduct, given that it would have to justify the imposition of the penalty.

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This report, except for any unintentional errors or omissions, constitutes our opinion on the matters raised.

Yours sincerely,

José Antonio Fernández Ramírez

Iván Porras Cívico

Fdez Burgos - Mapelli – Cabello, SL. Abogados y Asesores Fiscales
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