



# Tax implications of the New FIFA Agent Regulations

Europe



International  
Sports Tax  
Association

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# Background



## FIFA Football Agent Regulations (FFAR)

Following their approval by the FIFA Council in December 2022, the new FIFA Football Agent Regulations (FFAR) came into force on Monday, 9 January 2023.

## Key changes for tax & accounting

### Article 14: Service fee – general principles

- FFAR sees the introduction of the client-pays principle, requiring players to pay the invoices of their agents rather than their clubs.
- Service fees must be invoiced to the client, by the agent, in instalments every three months for the duration of the negotiated employment contract.

### FFAR FAQ March 2023 - Section 4.23

- Clubs can deduct the service fee for the agent from the player's monthly payslip. Agent must then invoice the player with the club in copy and the club will pay the invoice.

## Summary of our findings

Below is a brief summary of the key observations from contributing members in France, Germany, Italy, Portugal, Spain & the United Kingdom.

### Net tax position

Players will now pay their agent fees out of their net salary, post-tax. Some members felt that this could lead to an increase in player salaries to offset for this.

### Tax Deductions

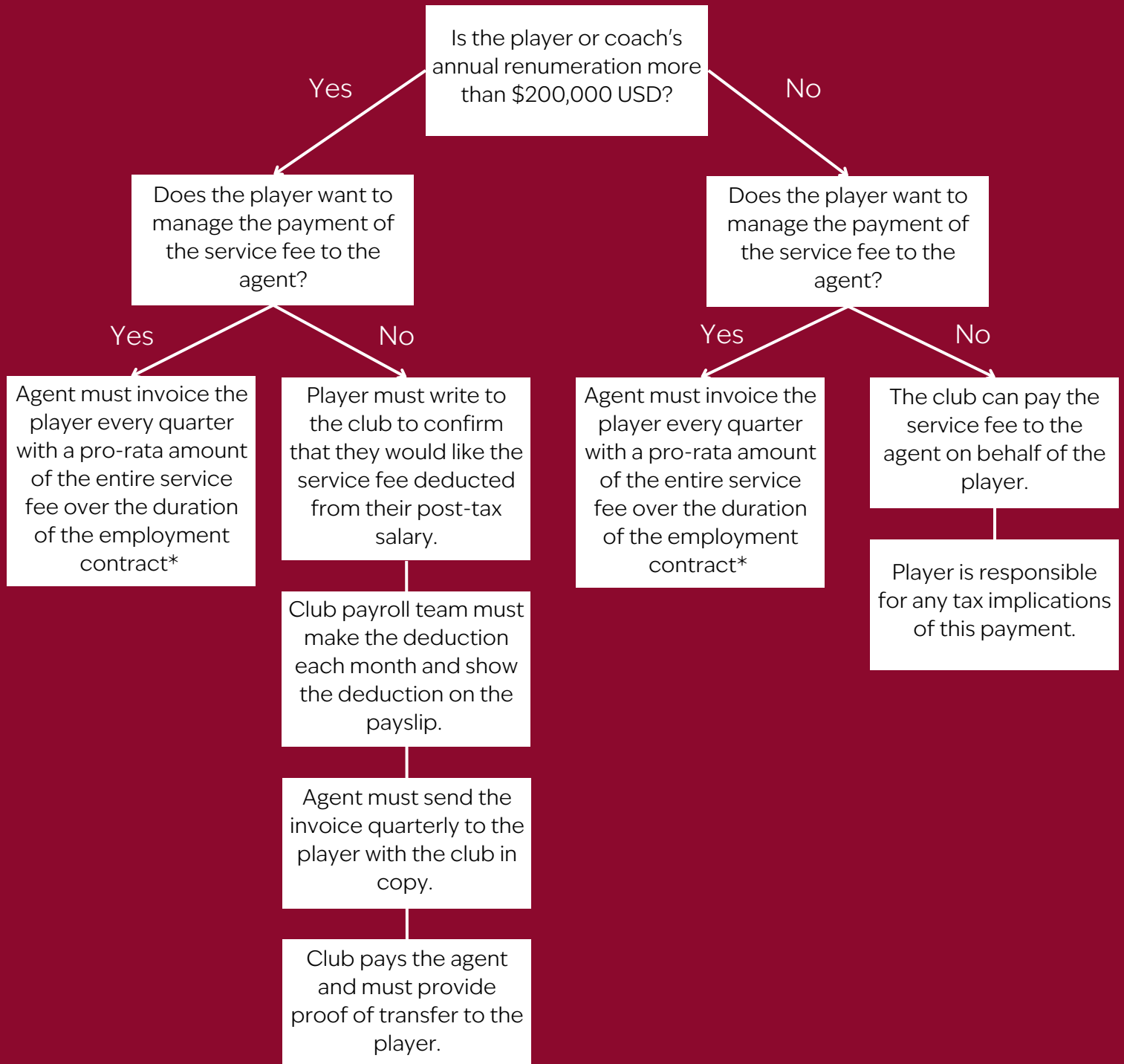
All countries, except France & Germany, noted that players will not be able to claim payment of services fees to their agent as tax deductible on their tax returns.

### Tax Investigations

Italy, Portugal & UK highlighted the potential positive impact on the reduction of tax investigations for dual representation and agent fees.

# Practical Support for players & agents

Below is a flowchart covering the potential options for players, agents and clubs of the 'client pays principle' as described in FFAR and the FFAR FAQ March 2023 Update:



\*Please note, Where a negotiated employment contract is less than six months in duration, payment shall be made in a single instalment at the expiry of the negotiated employment contract.

### Q. What are the personal tax implications for players (if any)?

A player is an employee of the club and receives wages whether paid in cash or in kind (e.g., from a French tax and social perspectives, the fact that clubs pay agent on the players behalf is considered as a benefit in kind).

The fact that clubs can no longer pay agents on the players behalf will certainly result in an increase of the part of wages paid in cash by clubs to players and consequently the taxable income of the players should be the same.

However, in France, employees can deduct their professional expenses for the determination of their taxable personal income. Two options exist: (i) either a fixed deduction equal to 10% of the gross amount of the wages is deducted (capped to 13,522 € for income earned in 2022) or (ii) the amount of accurate professional expenses is deducted (with no limit) provided that players can justify them. Considering the new rules, players will use the second option which will increase the probability of being tax audited.

In international context, impatriate tax regime provided by article 155 B of the French Tax Code may be applied by Players. In such context, additional remuneration linked to the taxpayer establishing himself in France (inward expatriation bonus) or an amount notionally valued at 30% of the total remuneration is exempt from income tax. In this case, the deduction of professional expenses takes place after the application of the impatriate tax regime.

Example:

- Total remuneration: 1,000,000
- Agent fees: 50,000
- Taxable income: 650,000 (i.e.,  $1,000,000 - ([1,000,000 \times 30\%] - 50,000)$ )

At first glance:

- Amounts paid by players (VAT included) should be considered as professional expenses and should be deducted from their taxable income of players.
- VAT invoiced by agent, if any, should not be recoverable by the players.

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### Q. What are the personal tax implications for agents (if any)?

No tax implications for agents. However, the VAT applicable regime should be assessed based on the territorial VAT rules (which will depend on the State the players and agents are located).

### Q. What are the corporate tax implications for clubs (if any)?

No major implications as the fact that clubs pay agents on the players' behalf is considered as a benefit in kind.

Wages paid in cash or in kind to players are tax deductible expenses for corporate income tax at the level of the club and consequently, should remain the same.

Please note that there will be no change for the clubs in the event that agents are directly hired by the clubs for their own needs.



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Having worked for more than 10 years for EY, Virginie joined the Firm's Tax department as a partner. She works with French companies and international groups on the management of their day-to-day and complex tax issues (merger-acquisitions, restructuring, external growth). She also advises private clients, and in particular directors, on their private estates.

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# Germany

## Member opinion

### Q. What are the personal tax implications for players (if any)?

When a player will pay directly for the services of their agent, the player can deduct the costs in his individual tax return as expenses regarding his employment income (salary from his club).

It is too complicate to explain all possible rulings when there is an obligation or not to prepare a German tax return.

But in general when having expenses then it make sense to prepare a German tax return and when you have income beside your employment income you are obliged to prepare a tax return. There is no need of a separate registration at the tax authorities, you just need to prepare a tax return.

### Q. What are the personal tax implications for agents (if any)?

The agent should check the VAT rulings if there could be any changes when creating an invoice to an individual instead of a club.

### Q. What are the corporate tax implications for clubs (if any)?

As the club will no longer need to pay the invoice on behalf of the player from the agent there is nothing to consider for corporate taxation.



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### Q. What are the personal tax implications for players (if any)?

The circumstance that clubs no longer can pay agents on behalf of the players, although certainly is a positive attempt to reduce tax disputes on qualification of such payments as taxable benefit in kind in the hands of the players, places a significant economic burden on players. Indeed, given that under Italian tax law income earned by football players in the framework of an employment contract with an Italian club is regarded as employment income and employment income is taxed on a gross basis, agents' fees will not be a deductible cost from players' taxable income. Moreover, since players are not able to recover VAT due on agents' fees, VAT cost will be borne by the players themselves.

The recently published FFAR FAQs clarified at §4.23 that if both the player and the club expressly agree to deduct service fee from the individual's remuneration, the fee due to the agent may be paid by the club instead of the player. This clarification should not trigger relevant tax impacts for players, as fees paid by clubs to agents on behalf of players will be qualified as a benefit in kind and will therefore be part of the remuneration package.

### Q. What are the personal tax implications for agents (if any)?

The main tax implication for agents concerns that Italian payors (i.e. resident players) do not qualify as withholding agents, thus implying agents will receive their income gross of any withholding tax. Considering that according to the Italian tax authorities' view income derived by agents is treated as self-employment income, this change may give rise to different tax ramifications depending on the tax residence of the agent: a) if the agent is tax resident in Italy, he/she will declare the gross income in his/her annual tax return without deducting any taxes; b) if the agent is not tax resident of Italy, he/she will be required to file a tax return in Italy for the portion of income which is deemed to be sourced in Italy (i.e. income relating to services performed by the agent in Italy) and pay the relevant taxes in Italy, unless the applicable tax treaty with the State of residence of the agent prevents Italy to tax in case the agent does not operate in Italy through a permanent establishment.

However, if agents' fees are directly paid by clubs according to §4.23 of the FFAR FAQs, clubs should be required to act as withholding agent and apply domestic withholding taxes on fees paid to agents (even if paid on behalf of players), i.e. 20% WHT if the agent is tax resident of Italy or 30% WHT if the agent is not tax resident of Italy, unless the applicable tax treaty with the State of residence of the agent prevents Italy to tax.

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### Q. What are the corporate tax implications for clubs (if any)?

As a result of the introduction by the FFAR of the so called “client pays” principle (along with the limitations as to the “dual representation”), the uncertainty about the qualification of the agent’s fee as a benefit in kind for the players should be mitigated and consequently Italian clubs should be less exposed to tax claims. However, this change might encourage players to negotiate a grossed-up salary increase to compensate the higher costs (that, as mentioned, are not deductible as professional expense).

### Q. Any other key changes in the regulations that have tax implications for football in your country?

Moreover, since FFAR provides a FIFA single certification, which is recognized worldwide, the Italian regulation on the “domiciliation” of agents should be amended accordingly. At present, it is provided that agents who are not European citizens, or who are European citizens but have not passed a certification examination deemed equivalent to the Italian one (“agente domiciliato”), may only act as an agent in Italy by domiciling themselves with an agent registered in the Italian register of agents (“agente domiciliatario”).



#### Alberto Brazzalotto - Partner, Maisto e Associati

Alberto Brazzalotto is admitted to the Association of Chartered Accountants in Milan. He joined Maisto e Associati immediately after graduating (cum laude) in Law at the University of Padua in 2010. His areas of expertise are international tax law, taxation of IPs, taxation in the sport and entertainment sector, personal and estate planning, trusts and taxation of individuals. He also assists clients (domestic and international) in potential tax controversies and tax dispute resolutions through settlements.

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### Q. What are the personal tax implications for players (if any)?

To the extent that it was common for clubs to pay the agent's fees on behalf of the player, the amount of such fees was considered as a benefit in kind subject to personal income tax. No withholding tax was applicable upon the payment, and therefore the player would have to pay the tax during the subsequent year after filing his personal income tax return.

As clubs will no longer be able to pay the agent's fees on behalf of the player (except if the player has a negotiated annual remuneration lower than USD 200,000), this tax framework is no longer applicable. It may be agreed between the club and the player to deduct the agent fee from the player's remuneration; however, this would not qualify as a benefit in kind (it is considered a simple technical/accounting assistance to the player).

In practice, this may lead to a negotiation of an increase of the player's salary to cover the agent's fees, subject to personal income tax and to immediate withholding tax on its payment (which may, in turn, lead to the player also trying to negotiate its gross up).

On the other hand, from a personal income tax perspective, the agent's fee paid by the player is not tax-deductible.

### Q. What are the personal tax implications for agents (if any)?

As clubs will no longer be able to pay the agent's fees on behalf of the player, there will be no withholding tax issues arising from such payment since players are not usually required to withhold any taxes upon payment.

Consequently, if there is no tax treaty in force, it may be mandatory for the agent to file a tax return in Portugal to declare this income and pay the applicable taxes.

### Q. What are the corporate tax implications for clubs (if any)?

From a corporate income tax perspective, clubs will no longer face discussions with the Tax Authorities on whether the payment of agent's fees on behalf of the player should be qualified as an employment income and if it is subject to withholding tax, thus reducing their tax liability.

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### Q. Any other key changes in the regulations that have tax implications for football in your country?

Before the new FIFA agent regulations, dual representation was allowed without any service fee cap. Consequently, it was not unusual for the engaging club and the player to split the fees according to the proportion of the services provided to each party, and only the part of the fees paid by the club on behalf of the player could be considered as employment income.

The new FIFA agent regulations continue to allow the dual representation; however, it sets out a maximum service fee which should be split 50/50. This means that, for example, if the agent is intitled to a 6% maximum fee, the club and the player will have to pay a maximum fee of 3% each, thus not allowing the engaging club to pay a higher proportion. Therefore, if the agent is intitled to the maximum fee, it is no longer possible to evidence that the part of the services provided to the club is higher in order to reduce the fees paid on behalf of the player and, consequently, the amount subject to personal income tax at the hands of the player.



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Bruno Arez Martins joined Eversheds Sutherland FCB in 2009 and became a Partner in 2019. He works in the Tax Department. His practice is primarily tax law, with a special focus on tax litigation proceedings, in the administrative and judicial stage, domestic and international tax planning, advising in direct and indirect taxes, property tax, special consumer taxes and criminal and tax liability of members of corporate bodies.

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### Q. What are the personal tax implications for players (if any)?

In my opinion, this change would have no tax implications for any of the parties involved, neither for the players, nor the agents, nor the club.

Although the payment was made by the club to the agent, it was made in the name and on behalf of the player. The payment was remitted through an invoice issued by the agent to the player, and the club deducted this amount from the remuneration of the employment contract signed between the club and the player and accordingly paid the agent.

Therefore, since as per the new Regulations, the club would not be able to pay on behalf of the player, the club would now have to pay the net salary in full to the player as per the employment contract and the player would then have to pay the agent separately. The updated FAQ from March has since clarified that clubs can withhold the agent fees from the players salary and pay these to the agent if the player provides a written request to the club to make the withholding.

There are no tax effects for the player, as it does not change his gross salary, nor does it change the fact that he cannot deduct the expense to be incurred by the agent's invoice, so his tax liability is identical.

### Q. What are the personal tax implications for agents (if any)?

There are no additional tax implications for the agent since the agent still must issue the invoice in the name of the player and accordingly, the agent would receive the payment directly from the player or from the club if written permission is provided by the player.

### Q. What are the corporate tax implications for clubs (if any)?

Before the club would receive an invoice from the agent in the player's name and would pay it on behalf of the player by deducting this amount from the player's salary. Therefore, that invoice was never an expense of the club.

By prohibiting clubs from paying the agent on behalf of the player, unless written permission is provided, the club will now have to pay a higher net amount to the player. However, the expense to the club will remain the same as the player gross salary would not change.

Continues on following page.

### Q. Any other key changes in the regulations that have tax implications for football in your country?

I would like to comment on two issues:

The first concerns the revival of the traditional term agent, rather than intermediary, and its definition as a natural person. In my opinion, this is not a simple change of conceptual terms but rather reinforces the tax interpretation by the Spanish tax administration of considering this activity as “highly personal services”. This activity's main added value is provided by a natural person, the FIFA-licensed agent. Even if the FIFA agent is allowed to carry out his activity through an agency, the inevitable tax consequence will be that, although the commissions are invoiced by the agency and paid to the agency, the FIFA-agent would obtain a personal remuneration corresponding to his contribution to the transaction, which may imply a higher tax cost for the agent.

The second is not a tax implication arising from the new regulation as such, since, although it is established as a general rule that the agent only acts on behalf of one of the parties involved, it is allowed (subject to the written consent of both parties) that there can be a 50/50 dual representation with player and club. But the fact is that, according to Spanish tax regulations, the expense that the player bears from the commission paid to the agent cannot be deducted from the player's income tax. Therefore, if the agent had to act only on behalf of one party, and this party was the player, this would clearly entail a tax loss for the player because his disposable income would be reduced (paying the agent) and bearing a higher double tax payment, both in income tax and VAT. By allowing for at least 50/50 dual representation, this disadvantage is limited to half.

Other professional athletes, in identical economic situation, who have to make a similar payment to an agent (with whom they do not have an employment relationship) in order to sign a contract for the same gross income, (a tennis player, a race driver, or a golfer for example), are allowed to deduct this payment under Spanish income tax law. This shows a clear detriment to the player, since the same situation, with the same economic capacity, gives rise to two totally different taxes.



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Luis Felipe Castillo Padilla began his professional career as an official of the Department of Treasury's Technical Inspection Section, performing his duties for nine years. Since 2004 he has been on voluntary leave from the Administration, working as a tax advisor at Llatas y Castillo asesores, where he has acquired extensive experience in a variety of matters related to the world of sport, advising athletes and entities in this industry and being a regular interlocutor with the Spanish Tax Administration in all kinds of verification and investigation procedures.

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### Q. What are the personal tax implications for players (if any)?

When a player pays directly for the services of their agent in the UK they cannot deduct the costs of this against their salary. That means that they will be settling the liability from their after tax income.

At the moment the player is subject to tax as a benefit in kind when the club settles the liability and the player is subject to a tax on the benefit. The benefits in kind is subject to income tax but not national insurance (social security).

In the new rules the player will pay the fee from after tax (and social security contributions) income. As such they will suffer a higher withholding than if the fee was paid for by the club.

In the UK a player can only deduct an expense from their employment income if it is incurred in the performance of the duties and is wholly, exclusively and necessarily incurred. The element necessarily will always fail as it is not a requirement of the employment for each and every employee to incur such costs.

If a player has a company for their commercial income the company can still claim a tax deduction against the cost of agents fees for the work specifically linked to the commercial income.

### Q. What are the personal tax implications for agents (if any)?

The agent will have to invoice the player unless the player provides written permission to the club for them to withhold the agent fee from their monthly payslips. The agent will have to make sure that the correct rate of VAT is being charged on the invoice, VAT in the UK is currently 20%. The player has no ability to recover the VAT charged.

### Q. What are the corporate tax implications for clubs (if any)?

As the club will no longer need to pay the invoice from the agent on behalf of the player there is nothing to consider for corporate taxation.



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Sofia Thomas is a Chartered Tax Advisor and Head of Tax at Juno. She is an award-winning tax expert, guest lecturer and author of the upcoming Bloomsbury publication, *Tax in Sport*. Sofia's current clients include English Premier League players, Olympians and players in the England Women's football team. She is often instructed when players move in or out of the UK or when sportspeople attend competitions or events in the UK.

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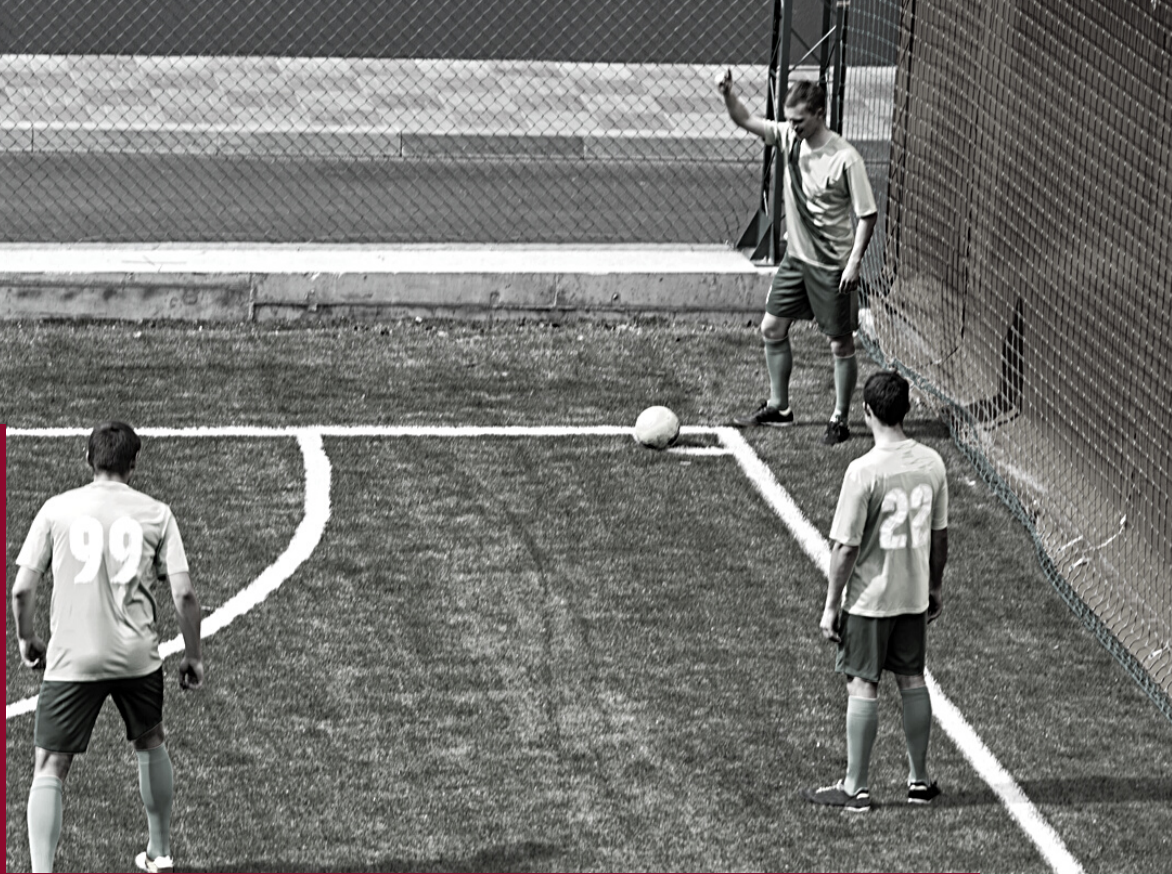
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