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Sports Persons Moving Abroad: The Financial, Legal, Tax and Social Consequences

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ABSTRACT

In this article, we will look at some of the financial, legal, tax and social consequences that arise when professional sports persons move abroad to practise their sports. We will concentrate on football players, as football is the world's most popular and lucrative sport. We will also concentrate on the tax aspects, as tax is such an important subject with often significant financial effects. Finally, we will draw some general conclusions.

INTRODUCTION

Migration is a defining feature of the present times in which we live, with people on the move around the world in search of better lives for themselves and their families. This is a pressing and controversial phenomenon - not least in Europe.

This trend is also manifesting itself in the world of sport.

In the last thirty years or so, we have witnessed a large number of sports persons moving abroad for better sporting opportunities in the furtherance of their sporting careers.

Take football, and in particular the English Premier League, for example

According to Gareth Southgate, the English National Team Manager, only 15% of players in the League will be eligible to play for England in the next ten years; and, in the last football season, 2018-2019, only 19.9% of starting slots at the top six clubs were filled by English players.

This trend is expected to continue unless the football authorities encourage so-called 'home-grown' players. This has been a thorny issue in football circles for several years. 'Brexit' and the increasing need for work permits for foreign players coming from the EU to play in the UK may possibly also help to arrest this trend!

Sports persons moving abroad face a number of challenges: financial, legal, tax and social.

Signing a new playing contract in a foreign country comes with a different legal and tax system (local professional advice will be needed); a different language (a dual language version of the playing contract will be needed); an alien culture; a change of team and colleagues; and a new social context. Let us deal with the last point first.

SOCIAL ASPECTS

As far as sports persons with families are concerned, they will have to cope with a number of social issues, such as:

- finding suitable housing;
- finding suitable schools;
- establishing new routines; and
- Creating new circles of friends.

They will need professional guidance and advice for dealing with all of these matters.

In particular, they will need to create, at the outset, a support network of reliable and experienced professional advisors in their new home country, who will be able to help them to settle down and, hopefully, integrate in their new working and living environments, with the minimum of delay.

They will also need to have - at least - a basic or working knowledge of the local language.

All of this will not be easy and will, therefore, need careful planning and an ongoing awareness of and attention to the details!

FINANCIAL AND TAX ISSUES

The financial aspects of the move are inextricably linked with the tax issues. Having a good financial package - salary, bonus, allowances and expenses - is one thing, but having to give most of it away to the tax man, through lack of tax planning, is something else. Thus, where it is legally possible to do so, sports persons need to arrange their financial affairs in such a way as to reduce the tax burden, as far as possible. This is tax avoidance, which is perfectly legal, as opposed to tax avoidance – that is, hiding taxable income – which is not. In fact, it is a criminal offence. And can land the offender in jail!

As already mentioned, in the last 30 years, there have been tremendous cross border movements in the world of professional sports.

For example, there have been a number of NBA players moving to Europe near the end of their sports careers to play in the European Basketball League (Euro League); a number of soccer players moving from Europe to the United States to play for the MLS; and so the list goes on.

During the past couple of years, with the growth of the Chinese Super League (Soccer), and the Chinese Basketball League, we have also seen a trend of near-retirement players moving to China to play either in the CSL or the CBL.

Players moving abroad have to face a number of challenges when settling and adjusting to the new reality of things, not least in the field of taxation.

In fact, one of the biggest hurdles faced by athletes playing abroad is dealing with the tax obligations that arise from their foreign playing contracts.

The fact that athletes are playing in foreign countries does not relieve them from their tax obligations back home and their foreign contracts may give rise to income tax in their home countries, in addition to the tax paid in the foreign country where they are playing.

Most tax authorities impose tax on visiting sports persons based on the principles of residency and source of income. As a result, professional sports persons competing internationally have be alert to the fact that they may incur tax obligations both in terms of tax filing and tax liability in the countries where they are competing.

The tax obligations of professional sports persons competing internationally vary, depending on whether they are competing individually or in team sports.

Residency is important for athletes whether competing in individual or team sports. Athletes are taxed in the country of their tax residency; however, when they compete with their team in a foreign country, any earnings attributable to the particular foreign country will most likely be taxable in that foreign country and athletes can take a tax credit for the tax paid there when filing their tax returns in their country of tax residence.

Any sponsorship or endorsement income received by athletes competing in team sports is taxed separately. Usually, all types of income are structured to be received through a corporate entity owned by the athlete, in order to optimize the tax burden.

It should be noted, however, that such entities are highly scrutinized by the tax authorities of most countries; therefore, these arrangements must have commercial substance to justify their existence. Practices, such as having offshore companies and accounts, which aim at hiding commercial income, should be avoided, in order to steer clear of any penalties or criminal charges from the relevant tax authorities for tax evasion.

A common misconception amongst international athletes is the belief that their tax obligations end by paying taxes in the country where they are employed; this is usually not the case and athletes should be aware that they may have a tax liability in both their country of citizenship and their country of tax residence, that is, where they are currently living and playing. The athlete's country of citizenship or domicile is the country where they come from; their country of tax residence is the country in which they currently live and work.

In most countries, in order to be considered to be tax resident, one has to live there for a period covering a total of 183 days or more within a calendar year.

There are four different ways in which countries all over the world apply taxation in terms of residency and citizenship and these are as follows:

- taxing both their citizens and residents on their world-wide income no matter where they live (for example, the United States);
- taxing their residents on their world-wide income (for example, the United Kingdom);

- taxing their citizen residents only on their world-wide income and not the foreign residence of their country (in the case of a '*non-dom*' tax regime);
- Taxing their residents on their local source income but not on their foreign source income (territorial tax system).

There are also a few countries that have specific regulations providing tax incentive packages for foreign sports persons moving to their country. These incentive packages usually differ from the country's standard tax regulations, like the 'Beckham' tax laws of 2005 in Spain. The so-called 'Beckham law' basically allowed foreign players living and playing in Spain to be taxed at the rate of 24.75% instead of a progressive tax scale ranging from 24% up to 43%.

It is, therefore, important that athletes are aware of the tax treatment of their earnings in both their country of citizenship and country of residence.

For example, international players, who are US citizens or US 'green card' holders, will still have to file a tax return in the US and pay any applicable taxes on their world-wide income, despite the fact that they are playing abroad and are, thus, tax residents of another country. Usually, when filing their US tax return, these athletes are allowed to receive a tax credit for any taxes paid abroad. In view of the fact that personal taxation rates in the US are quite high, in many instances, an additional US personal tax liability may arise.

It is vital for athletes to make sure that they maintain records of their compensation deals when playing abroad. These records will include:

- pay slips;
- earnings statements and tax returns;
- a copy of their playing contract; and
- Proof of tax payments and invoices of any playing-related expenses (such as agents fees).

By keeping a record of these items, athletes make it easier for their tax accountants to prepare their tax returns and take advantage of any deductions to which they are entitled and that will minimize their tax liability.

A common practice with team athletes playing in Europe is that social security contributions and income taxes arising from the playing contract are assumed by sports clubs and the athletes are paid on an agreed upon net amount. Therefore, an understanding of the tax treatment of their contracts and the allocation of the resulting tax burden will be helpful to players during the course of their contract negotiations with clubs.

The complexity of tax systems places a heavy toll on professional sports persons competing internationally. Much preventive planning has to be done on the athlete's part to optimise their overall taxation position and be tax compliant wherever they are competing. It is vital, therefore, for athletes moving into the international arena, to get assistance from an experienced professional tax consultant, who will advise them on how to handle the different tax obligations when they sign a sports contract abroad.

After all, when it comes to tax compliance, the final responsibility and liability lies with the player him or herself and no one else!

One area where the tax position of sports persons becomes particularly important in financial terms is the commercial exploitation of their sports image rights. Again, negotiating a good financial deal is one thing but ensuring that no more tax is paid than may be lawfully arranged is another thing.

Tax and Image Rights

Sport nowadays is big business and worth 3% of world trade and accounts for 3.7% of the combined GNP of the Member States of the European Union. That is, a staggering €407 billion; and sport employs 5.4% of the EU labour force, that is, some 15 million people.

Not only are mega sums generated by the sale of sports broadcasting rights, especially to major sports events, such as the FIFA World Cup, and other major football tournaments and leagues,[1] but also through the commercialisation of the sports image rights of well-known teams and sportspersons, especially professional football clubs and players. For example, Singaporean billionaire, Peter Lim, acquired on 29 June 2015, the image rights of the football super star, Cristiano Ronaldo, for a six-year period, believed to be for a mega but undisclosed sum, stating that:

"*Ronaldo is not just a great soccer player, he is also a very popular personality ….* [and]*…. I am confident that the Cristiano Ronaldo brand will continue to grow.*"

And Ronaldo commented as follows:

"*This is a very strategic move for me and my management team to take the Cristiano Ronaldo brand to the next level, especially in Asia.*"

According to Sepp Blatter, the former President of FIFA, the World Governing Body of Association Football, sport is now a product in its own right. And, football, as mentioned, is not only the world's favourite game, but also the world's most lucrative sport. The value of the European football market is now estimated to be worth some €28.4 billion.[2]

Image Rights

Image rights are now a permanent and significant component of the sports marketing mix, not least in the commercialisation of football clubs and players; so, what do they comprise?

Image rights are widely defined, using the expression 'image' not in its narrow sense of 'likeness' but in its wider sense of 'persona' or 'brand' to use a marketing term.

In *Proactive Sports Management Ltd v. 1) Wayne Rooney, 2) Coleen Rooney (formerly Mc Loughlin), 3) Stoneygate 48 Limited, 4) Speed 9849* Limited,[3] a high-profile case involving the sports image rights of the former Manchester United striker and England captain, Wayne Rooney, the English High Court defined these rights (at para. [187]) as follows:

"Image Rights means the right for any commercial or promotional purpose to use the Player's name, nickname, slogan and signatures developed from time to time, image, likeness, voice, logos, get-ups, initials, team or squad number (as may be allocated to the Player from time to time), reputation, video or film portrayal, biographical information, graphical representation, electronic, animated or computer-generated representation and/or any other representation and/or right of association and/or any other right or quasi-right anywhere in the World of the Player in relation to his name, reputation, image, promotional services, and/or his performances together with the right to apply for registration of any such rights."

As will be seen from this judicial pronouncement, image rights are widely defined.

Image rights are also known by different names and subject to different legal treatment in different jurisdictions around the world.

In the United Kingdom, they are known as image rights; in Continental Europe, as personality rights; and, in the United States, as publicity rights.

In Continental Europe and in the United States, image rights are generally recognised for legal purposes.[4]

Whereas, in the United Kingdom, image rights *per se* are not legally recognised,[5] except for tax purposes, following the UK Tax Appeal Decision in the Sports Club case in 2000.[6]

The Sports Club Case

In that Case, Arsenal Football Club succeeded in having payments made to offshore companies in respect of the Club's exploitation of the image rights of their players, David Platt and Dennis Bergkamp, classified, for tax purposes, as capital sums and, therefore, non-taxable as income. Likewise, social security contributions due from the club and the players were not payable.

Thus, at first sight, since the Sports Club case, the recent important UK Decision in the Geovanni Gomez case (the Geovanni case),[7] released on 22 March 2019 by the UK First-tier Tax Tribunal (the Tribunal), might seem to strike a fatal blow against image rights tax mitigation schemes in football.

In that case, the Tribunal held that the image rights payments made to the football player, Geovanni Gomez (Geovanni), were taxable as part of his income and, as such, did not fall within the tax parameters recognised in the earlier Sports Club case.

The Geovanni Case

In this case, the facts briefly were as follows.

Hull City Association Football Club (Hull) entered into an Image Rights Agreement with an offshore service company, Joniere Ltd, registered in the British Virgin Islands, to which one of its players, Geovanni, had assigned his image rights. The Agreement covered non-UK image rights only. The UK rights were covered by the player's contract with the Club.

The payments made by the Club to the offshore company in respect of the overseas image rights of Geovanni amounted to £440,800.

The Tribunal held that the substance of the payments should be considered rather than their form. On this basis, the Tribunal, in deciding the case, took into account the following key findings of fact:

- Whilst it is not only players in the "elite group of recognisable sports people" who have image rights with an overseas commercial value, but what makes a player sufficiently recognisable for their image rights to be valuable will include: talent; the league in which they play; the team for which they play; and possibly

other personal attributes (such as their nationality).

- Clubs who intend to acquire and exploit players' image rights would be well advised to keep negotiations of that agreement separate to the salary negotiations and to ensure that the valuation of image rights is documented by reference to a business case for the initial acquisition, together with analysis monitoring the effectiveness of the exploitation of the rights over the period of the agreement.
- Hull did not, at the time, have the experience, resources or ability to exploit the commercial opportunities associated with players' overseas image rights. The Club's two principal sponsors were based in Hull and yet the domestic market was, notably, not covered by the image rights agreements.
- No due diligence was carried out by Hull in relation to Joniere and there was no evidence that the Club had ever taken steps to ascertain whether or not Joniere actually owned Geovanni's image rights. In the circumstances, nobody at the Club could reasonably have believed, at the time, that Geovanni's overseas image rights had any commercial value.
- Geovanni's basic wage at Hull under his playing contract was £748,800 and the annual 'image rights' payment of £187,200 was exactly 25% of that sum. However, there was no reliable evidence as to how the parties had arrived at the amount of the annual image rights payment and no valuation advice had been sought or received by Hull at the time.

Taking a realistic view of the facts of the case, therefore, the Tribunal concluded that the reason that Hull took no steps to exploit Geovanni's overseas image rights was because it never had any clear intention, plan or real interest at any time in commercially exploiting those rights.

The Tribunal also came to the conclusion that the payments claimed to be made in respect of the overseas image rights were, in fact, made in order to encourage Geovanni initially to enter into - and then to extend - his playing contract with Hull; the duration of the overseas image rights agreement was coterminous with his playing contract. In other words, the payments made by Hull for Geovanni's overseas image rights were a reward for his services as a footballer and formed part of his playing earnings.

Based on all these factual findings and applying the legal principle of substance over form to the case, the Tribunal held that the overseas image rights payments were part of the player's earnings from his employment with the Club and taxable as such.

Under this principle, a realistic view of the payments, as opposed to relying on the legal form in which they are expressed to be made, as evidenced by the contracts entered into between the parties, is applied. Thus, the club should have deducted and accounted for income tax and national insurance on the payments.

In other words, the ruling established, almost twenty years ago, in the leading UK Sports Club case, namely, that payments under an agreement for the use of the image rights of a professional football player can, in principle and according to the particular circumstances, be treated separately, for tax purposes, from the playing activities for which the player is employed by a club, was not applicable according to the particular facts and circumstances of the Geovanni case. In other words, the Geovanni case was decided on its own particular facts and merits and does not, in the view of the authors of this article, overrule the Sports Club case decision, which is, therefore, still good law!

In summary, the Tribunal held that the payment arrangements in the Geovanni case with the offshore company had no substance to them and, therefore, could not escape being taxed as income. In other words, this was a decision based on the particular facts and circumstances of this individual case.

Lessons to be Learned from the Geovanni Case

So, what are the lessons to be learned from the Geovanni case?

The core issue, when structuring image rights deals from a tax sheltering point of view, is that there must be a real and commercial basis to the image rights payments, and they must make sense financially. If these criteria are not satisfied, then the payments for the rights will be treated as income and taxed as such.

Also, the player must also have a certain celebrity status in order to justify actually having image rights to commercialise and financially exploit in the first place. Otherwise, the payments will again be a sham and not pass the close scrutiny of the Tax Authorities, who seem to have declared war on image rights deals – not least, HMRC (Her Majesty's Revenue and Customs), the UK Tax Authority. There seems to be a general view that image rights of footballers are overvalued and represent a form of so-called

'aggressive tax avoidance'. Such an expression seems to be a contradiction in terms, since tax avoidance is perfectly legal, whilst tax evasion is not and is, in fact, a criminal offence, which, in extreme cases, may result in a custodial sentence and/or a hefty fine. See the recent case of Ronaldo in Spain where he was fined €18.8 million for tax fraud involving the commercial exploitation of his very valuable image rights.

The image rights must actually be exploited and used by the player's club. In other words, the club must, in fact, be paying for something that it is receiving and getting value in return for the use of the player's image rights. There must be a '*quid pro quo*' for the image rights payments.

Again, the value placed on the image rights being exploited must be a defensible one and in proportion to the amount paid for the playing rights. This is where an independent third-party professional valuation of the image rights concerned comes into play and is essential.

There also need for there to be separate negotiations and separate documentation in respect of the playing rights and the image rights at all times, which should never be dealt with in the same document. In other words, a playing contract and a separate image rights contract.

Full records of negotiations should also be made and retained.

Valuation of Sports Image Rights

As was shown to be patently lacking in the Geovanni case, there is a need for the image rights to be properly valued and justified, for tax and other purposes, rather than picking a figure out of thin air! Or using a percentage of the value of the playing rights

APC Sports Consulting have developed a professional system of independently valuing sports image rights, which is based on a reliable and realistic methodology, known as the APC Brand Evaluator ®.

Placing a value on a sport's personality's image rights is not an easy exercise but a complex one.

It requires a certain expertise and skill in evaluating intangibles and a tried and tested methodology. It also requires an in-depth knowledge and experience of the Sports Industry. In particular, the factors relating to the development of the sport's personality as a 'brand' in his/her own right, in his/her own particular sport, and at his/her own stage in his/her own sporting career.

Also, as part of the evaluation process, risk factors relating to the particular sport's personality need to be taken into account. Particularly, depending on the sport concerned, the risk of injury, which could be temporary or permanent leading to the end of the sport's personality's career.

Other considerations, such as age and life-style, and the popularity of the sport concerned, need to be factored into the valuation process to achieve a reliable figure that can be defended in commercial negotiations and also, equally importantly, before Tax Authorities.

Conclusions from the Geovanni Case

The Geovanni case must serve as an object lesson on how not to structure image rights arrangements, for tax purposes, and the detailed critique of them by the Tribunal in its decision will repay careful study to avoid the pitfalls identified when negotiating and formalising image rights deals.

Just setting up an offshore image rights company is not enough to avoid tax. In particular, it should have real substance and be organised and managed accordingly with competent personnel.

It is submitted that tax sheltering arrangements of sports image rights deals are, by no means, dead, but can be set up and managed successfully, if scrupulous attention is paid to the above considerations and the pitfalls exposed in the Geovanni case are avoided, despite the fact that Tax Authorities are out for their pound of flesh and, accordingly, will do their upmost to strike them down at every opportunity.

Conclusion

It is clear that moving abroad presents sports persons with many opportunities, but also with some risks from a legal and tax point of view.

It is essential, therefore, that sports persons are aware of these risks and have alongside them competent professionals, who are able to advise and assist and keep them on the right side of the law, and thereby ensure that their foreign forays are successful in sporting and other respects, not least as regards financial ones!

References

[1] The cost of the English Premier League broadcast rights for the seasons 2019-2022 has increased by 8% to €12 billion.

[2] Seehttps://www2.deloitte.com/uk/en/pages/press-releases/articles/european-football-market-worth

-28-billion-euros-as-premier-league-clubs-lead-the-way-to-record-revenues.html.

[3] [2010] EWHC 1807 (QB).

[4] In Continental Europe, image rights are protected by Constitutional provisions, and not all States in the US legally recognise them as rights of publicity.

[5] See the Australian Case of *Victoria Park Racing & Recreation Grounds Co Ltd v Taylor* (1937) 58 CLR 479.

[6] See *Sports Club plc v Inspector of Taxes* [2000] STC (SCD) 443.

[7] *Hull City AFC (Tigers) Limited v HMRC* [2019] UKFTT 0227 (TC).

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