SQUIRE SANDERS

BOLTING FROM UK TAX

Unless you are lucky enough to be Usain Bolt you need to remain alert and focussed when it comes to your UK tax affairs. Coming under scrutiny from HMRC can easily take the adrenaline and indeed most of your winnings derived from performing at a UK based sporting event.

In understanding whether one ought to be concerned or not we start from the premise that visiting competitors are non-UK resident and therefore taxable in the UK only on UK *source* income and gains.

The legislation then goes further than this and section 27 of the Income Tax (Earnings and Pensions) Act 2003 and Sections 13 and 14 of Income Tax (Trading and Other Income) Act 2005 impose a UK income tax charge on non-resident sportspersons employment income derived from *any UK performance*. Courtesy of the 2006 House of Lords Agassi case this includes any UK-related endorsement income such as payments made outside of the UK by a non-UK brand owner to a non-UK company owned by a non-resident individual. Seems quite far reaching. Apportionment of these earnings is tricky but HMRC take a robust approach usually with reference to the number of appearances in the UK. Usain Bolt was not shy about voicing his unease about these rules (probably with his very lucrative Puma sponsorship in mind) and so became the London 2012 dispensation with a little persuasive assistance from the IOA no doubt..

Exemptions

Section 9 of the Finance Act 2013 extends the amnesty offered to Olympians and para-Olympians for London 2012 to the Glasgow Commonwealth Games which start on 23 July 2014. There will be an exemption for non-resident accredited competitors on all income arising from competing at the Games or from any activity performed during the period 4 March 2014 and ending 3 September 2014 where the main purpose is to support or promote the Commonwealth Games.

Note that the exemption does not extend to non-resident officials, sponsors or coaching/management staff- the entire entourage will be taxable.

Not all sportspeople are so lucky as to be granted this exemption (Nadal continues to shun Queens) and while HMT seem steadfast in their piecemeal approach to allowing exemptions on a case by case basis, sportspersons must be vigilant with regards their UK tax liability and reporting and filing obligations.

Statutory Residence Test

As part of this vigilance, those who spend a significant amount of time in the UK both performing and enjoying all else that the UK has to offer, be it business interests or tourism, they ought to be aware of what was a major overhaul of the law of UK tax residency with the introduction of the UK Statutory Residence Test with effect from 6 April 2013.

One might quite easily unwittingly even find themselves UK resident and assessable to UK tax on their (substantial) worldwide income and gains. Ouch. It still broadly remains that so long as the individual spends less than182 days in the UK he/she should be safe but the 90 day rule has gone. In order to be unequivocally non-UK resident one must now spend fewer than 46 days in the UK (having not been resident in any of the 3 preceding tax years) or less than 16 days in the UK if previously resident. There is also a full-time work abroad test which assumes fewer than 30 working days in the UK in order to be conclusively non-resident.

Where the individual has available accommodation in the UK, possibly has a spouse or children at school in the UK and spends over a month working in the UK then he must have regard to a particular number of days he is permitted to stay in the UK before he becomes UK resident. Any breach of this prescribed day count and you will become UK resident.

So it remains for the sportsperson to remain alert to questions of their UK tax exposure. These exemptions help the non-resident if indeed HMRC choose to grant such relief but beware also the UK resident. Of course if the person in question is non UK domicile there may be avenues to explore to protect any non UK earnings.

Contact

Helen V. McGhee
Chartered Tax Adviser
Associate
T +44 20 7655 1684
E helen.mcghee@squiresanders.com