



Taxing Matters

Navigating the complexities of the tax world

RPC

Taxation of agents' fees in the football industry with Michelle Sloane

Alexis Hello, and welcome to Taxing Matters, your one stop audio shop for all things tax brought to you by RPC. My name is Alexis Armitage and I will be your guide as we explore the sometimes hostile and ever-changing landscape that is the world of tax law and tax disputes. Taxing Matters brings you a roadmap to guide you and your business through this labyrinth. In case any of you miss any crucial information or just want some bedtime reading, there is a full transcript of this and indeed every episode of Taxing Matters on our website at www.rpc.co.uk/taxingmatters.

Alexis I am delighted to be joined today by one of the partners and one of my colleagues in the Tax Disputes team at RPC, Michelle Sloane. Michelle specialises in the resolution of tax disputes and financial crime and acts for both corporate and individual clients. Michelle has in-depth experience handling HMRC enquiries and of high value tax appeals at all levels including before the tax tribunals, the Court of Appeal, the Supreme Court and the Court of Justice of the European Union. Michelle's expertise includes judicial review proceedings scrutinizing HMRC's conduct. She also advises those facing HMRC criminal investigations and assists clients with managing urgent issues such as HMRC dawn raids. Michelle also has extensive football industry experience having advised players, clubs and agents in respect of HMRC's civil and criminal investigations and disputes. Welcome Michelle and thank you so much for joining me today.

Michelle Thanks Alexis it's great to be here.

Alexis Today Michelle and I are going to be discussing agents' fees, so without further ado what is the tax issue with football agency fee payments?

Michelle Well in order to answer that I will first explain the background to football contracts and then detail the specific issue. Within professional football it is common for football players to use the services of an agent. The services provided by the agent typically include the negotiation of an employment contract with a new football club or the renegotiation of an employment contract with an existing club. This means that football clubs are usually required to engage with agents if they wish to sign a particular player or renegotiate a contract with an existing club player. In these contract negotiations agents often act for both the player and the club and this is referred to as dual representation. In dual representation transfers, it will be necessary to allocate the agent's fee between player and club services. This will reflect the extent to which the agent represented the player and the club and how much of that payment applies to the services provided by the agent to each of them. Normally the club pays the agent directly for both the player services and any club services. The amount paid by the club to the agent on behalf of the player represents a taxable amount for the player as a Benefit in Kind, in addition the club will be able to recover VAT incurred on any agency fees it pays. The tax issue becomes how that fee should be split between player and club services.

Alexis And so what is HMRC's position on the split?

Michelle Historically, HMRC used to accept a 50/50 split between club and player services on dual representation contracts which provided clarity. In these situations a different split could be taken but this obviously increased the likelihood of an HMRC enquiry. Over the years HMRC felt that this position had been exploited in that agency fee splits didn't represent the commercial reality. HMRC therefore started to move away from a 50/50 split. In March 2021 HMRC released new guidance which was a change of stance. In these guidelines it states that in dual representation contracts it will be necessary to allocate the agent's fee between player and club services and it specifically states the split of payment value of the agent fee between player services and club services must represent the commercial reality of the services provided. HMRC does not accept a 50/50 split in agent's fees as a default position. So this was a complete change in stance by HMRC and in this year, in May 2024, HMRC issued further guidance which substantiates the March 2021 guidance and further develops their position on dual representation contracts. In this guidance, HMRC say their default view is that the majority of the value of services provided are to the player, given the existing

relationship between the player and agent prior to the negotiations. It goes on to state that they accept the services that the agent provides can be of a significant value to a club but that they don't accept this is default for dual representation. HMRC will look closely at what a player has agreed to pay the agent in their representation contract as well as asking clubs to justify the apportionment they have made between the services provided to the club and player. The guidance focuses heavily on documentation to be kept by clubs, intermediaries and players of both initial discussions in formalised agreements. The amount of contemporaneous evidence that HMRC expects clubs and agents to keep is also significant.

Alexis So what records should clubs keep to show HMRC the split represents the commercial reality of the services provided?

Michelle As mentioned, what HMRC recommends puts significant record keeping obligations on clubs and are particularly onerous. These include: the specific reasons for engaging an agent for a specific transaction; contemporaneous evidence of the engagement of the agent, including things like the instructions given and the level of fee discussed; contemporaneous evidence of the work done for the club; evidence to support the basis of any split in the agent's fee paid between club and player services; evidence to support any variation of the fees shown in the player agent representation agreement; evidence to substantiate the work conducted by all the agents where multiple agents are used in respect of the same player for a transaction and evidence to demonstrate that the fees paid to agents are commensurate with the services they provided. So basically throughout the engagement with the agent the parties involved should be collecting evidence to demonstrate that the agreed services are in fact being provided. Football transfers negotiations are an area where much of this is conducted via telephone calls and various messages. On this basis it is important that contemporaneous notes are taken throughout the negotiations. All text messages, WhatsApp messages, Teams messages and emails should be filed and retained to evidence the services received. Additionally invoices should be sufficiently detailed as to who is receiving the service and what it relates to.

Alexis Great thank you. So what are some key risk areas and areas you see HMRC investigating?

Michelle HMRC's guidance sets out indicators of risk which may cause HMRC to look more closely at the arrangement. These include payments treated as a benefit to the player being lower than amounts those players are due under existing arrangements they have with agents. Payments to individuals who are connected with, or family members of, the players and payments to sub-agents. I would say quite often it is a misunderstanding on HMRC's part about the services an agent provides, for example, an agent might be saying to a club "I want £250,000 a week for this player", HMRC will then say "well this is all player services because they are negotiating on behalf of the player to get the best deal". However, in this situation there's also valuable club services being provided, often there are a number of clubs vying to secure the player, the agent is bringing a player to a club that they might not otherwise have been able to secure so they are providing a valuable club service.

Another area that we are seeing HMRC focus on is contract dates; they see a dual representation contract as, for example, dated the same day as a player's employment contract and then they say well there was little time for the agent to provide services to the club, but in this situation HMRC are not understanding the commercial reality of a transfer negotiation. Communications between player, agent and club could likely be incurring for some time and it is only once the transfer is going through that the documents are drafted/executed, so obviously to formalise this earlier is premature. So although all documents are dated the same day, in reality services may have been carried out over a period of time knowing that no one will be paid unless a deal is finalised.

Another area of focus that we see is payment to family members and this is a section in the new 2024 Guidance. However the family member might have a huge influence over where that player goes, if the family pushes the club, this is providing a club service and something we have been arguing with HMRC on enquiries we are handling. HMRC have gone further in the 2024 Guidance and are now also referring to disguised remuneration legislation in respect of these payments. HMRC are also putting a lot of emphasis on time spent by the agent, for instance if an agent brings a player like Lionel Messi to a club, whilst they might not have spent a lot of time on the negotiations they are bringing a valuable player to the club providing a significant benefit to the club.

HMRC is also particularly concerned about payments to agents on the club side which end up in the hands of the player, their family or other connected parties. This is an area where we have seen HMRC commence a criminal investigation.

Alexis Brilliant so what are your key takeaways for anyone listening Michelle?

Michelle Well in football there's obviously significant sums involved in transfers, on this basis it is a major target area for HMRC. HMRC are not afraid to use all powers available to them when investigating transfers, including their criminal powers. This was obviously evidenced in 2017 during the high profile raids of West Ham United and Newcastle United Football Club. On this basis it is extremely important that all parties involved in dual representation arrangements carefully evidence the apportionment of payments to agents under dual representation agreements to ensure they reflect the commercial reality of the services provided by the agent to the respective parties.

Alexis Brilliant, well thank you so much for your time and for telling us about agents' fees. Unfortunately that is all we have got time for in this month's episode. Thank you again to Michelle for today's podcast. As ever a big thank you goes to Inciter Productions and Andrew Waterson for the production, music and sound editing of this episode.

A full transcript of this episode together with our references can be found on our website www.rpc.co.uk/taxingmatters.

If you have any questions for me or for any of my guests or any topics you would like us to cover in a future episode, please do email us on taxingmatters@rpc.co.uk. We would love to hear from you.

If you like Taxing Matters why not try RPC's other Podcast offerings, Insurance Covered which looks at the inner workings of the insurance industry hosted by the brilliant Peter Mansfield and available on Apple Podcast, Spotify and our website or why not try the Work Couch the podcast series where we explore how your business can navigate today's tricky people challenges and respond to key developments in the ever evolving world of employment law hosted by the fantastic Ellie Gelder and also available on Apple Podcast, Spotify and our website.

If you like this episode please take a moment to rate, review and subscribe and remember to tell a colleague about us.

Thank you all for listening and talk to you again soon.



RPC is a modern, progressive and commercially focused City law firm. We are based in London, Hong Kong, Singapore and Bristol. We put our clients and our people at the heart of what we do.