

## Testimonials can be taxing

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"Tax doesn't have to be taxing," according to the presenter in the rather amusing TV advert on behalf of HMRC promoting the submission of tax returns on time. Perhaps his tag line should be "Tax is not meant to be taxing." Often, even if you know the tax treatment of certain items, the form does not cater for them.

But what about when you don't even know the correct tax treatment of a particular item? For example, when a sports star is granted a benefit match, are the proceeds in whole or in part taxable? It's worth noting that there's a document on the HMRC website entitled, "Tax treatment of rugby and soccer players: benefit matches."

This year there has already been a focus by HMRC on benefit years. I understand that a number of sports clubs, mainly cricket, rugby and soccer have received a request for information from HMRC on all players who received a benefit or testimonial year within the last six years.

It is, therefore, fair to assume that it is an area from which HMRC considers there may be an ability to raise significant revenue for the Exchequer. It is important to make sure that benefit years are established properly.

Before examining the tax consequences it is necessary to understand the usual form for rewarding a player for his loyalty and dedication by granting a testimonial season. Usually the player's benefit or testimonial year will be run by a committee. The composition of the committee will vary according to the player.

I believe the committee for Alex Ferguson's testimonial included his accountant. In my view, this was a wise choice, as testimonials are a grey area of tax law and need to be handled very carefully. The player cannot himself have initiated the testimonial, nor can his club have been involved in organising it, because it can then be classed as remuneration earned from employment and would therefore be taxable.

I understand that Sir Alex renegotiated his contract with Manchester United prior to the testimonial year.

There would have been nothing in the contract about a right to a testimonial year, otherwise HMRC would have been knocking on the door claiming that, as a contractual right, it was not tax free. This is the first major area where HMRC will focus.

Not only do their manuals tell the Inspectors to ascertain the details of the contract of employment but they also state that there may be an oral agreement that a particular club will grant a testimonial after a specific period of service. Clubs, players and agents should be very careful when agreeing that a particular player will be granted a testimonial. Some of the direct tax cases on this area are quite old but many of the principles are valid.

One such case concerned an automatic arrangement whereby a football player received his testimonial after five years and the second after ten. This was held to part of his remuneration and therefore subject to income tax.

Another case involved a cricketer and his right to receive monies collected at matches where 50 runs were scored, as well as other achievements. These were also held to be received by virtue of his employment, and thus taxable.

It can therefore be seen that both contractual rights and funds received from the club, or at its behest, will be a problem and should be avoided.

On the positive side, the Inland Revenue has said that it looks at the circumstance of each case very carefully. If it is factually correct that benefit monies were not earned as part of a contract of employment then no tax is due.

However, recently, HMRC and the press have identified a potential area for attack; namely whether or not the testimonial committee is itself trading or in business. The comments have had three strands.

Firstly, HMRC has formed the opinion that committees organising and staging events during the testimonial year may be 'trading'. If they are trading then the committee members could be liable for any corporation tax due on any profits.

Secondly, the committee could be deemed to be in business. This gives rise to a liability to register and charge VAT on events such as testimonial match admission and dinners, where this income exceeds the VAT registration threshold, although it will facilitate the recovery of related VAT on expenditure.

In the past, different organising committees have utilised different structures. However, there was a case, albeit not recently, in which an organising committee was considered to be in business for VAT purposes and therefore would have to be VAT registered. I believe it would be difficult to argue against VAT registration, where the organising committee has admission income above the VAT threshold.

The third area of focus concerns the past - namely six years for tax and three years for VAT. This will need to be dealt with on a case by case basis.

Over the last few years, the need for a benefit year at the top end of football has abated somewhat. This is partly because footballers have become used to substantial salaries and partly because the likes of Sir Trevor Brooking have put pressure on the football world to restrict them to the really needy and deserving cases such as career ending injuries. However, in most cases cricketers and rugby players earn far less and would not welcome an unexpected tax assessment.

Some years ago, what is now HMRC, issued a brief to the charity sector dealing with both direct tax and VAT. It would be very useful if HMRC could put together something similar for testimonials for sports players. In the meantime, any testimonial committees should make certain that they have appropriate tax and finance advice on the committee, especially as the rules of practice that have operated for many years by HMRC may change.

The most problematic issue concerns whether the organising committee is subject to corporation tax and on what particular profits. It may be that this issue is not resolved until a test case is decided. However, from April 2008, it is possible to obtain clearance from HMRC - so at least you can avoid taking a leap in the dark.

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