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In this issue:

Smart Decisions. Lasting Value.

The sports, entertainment and media industries are competitive, diverse, constantly changing and unpredictable. We get it. That's why we have created a niche group with specialized experience and developed services that cater to the sports, entertainment and media markets and address today's most complex issues.

Our clients include producers, artists, athletes and those affiliated with the business of entertainment, sports, technology and media. Crowe Soberman's professionals constantly monitor emerging issues in these areas both in Canada and internationally so that we are ready to structure our clients' financial matters and act in their best interests.

Whether you are launching a new career or you are already a seasoned veteran in one of these industries, our specialty group can help you establish solutions for today's issues and take advantage of tomorrow's opportunities. You focus on your game, and Crowe Soberman will help you take care of business.

Jeffrey Steinberg, CPA, CA, Jeffrey Steinberg CPA Professional Corporation, Partner, Audit & Advisory

Jeffrey Steinberg is a partner in Audit & Advisory at Crowe Soberman, a member of the firm's Management Committee, as well as the co-leader of the firm's Sports & Entertainment practice. Jeffrey's clients include professional athletes, musicians, producers and those affiliated with the entertainment business. His vast knowledge and experience in both Canadian and U.S. tax allows him to provide solutions to complex issues.

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Performing in Canada - The GST Blues

August 2017

Over 25 years after it was first introduced in Canada, the Goods and Services Tax ("GST"), while simple in concept, remains one of the more confusing taxes in Canada to apply, especially when it comes to non-residents.

The GST is a Canadian federal value added tax. Similar to other value added type taxes from around the world and unfamiliar to those in the United States, the GST for most businesses, is intended to be a cost only to the person who consumes the good or service. An entity, like a business, who is not the end consumer, would normally be able to recover any GST paid. At the same time, it is the responsibility of the business to collect GST on each sale of good or service that it provides in Canada.

These rules apply no differently in the entertainment industry, when an actor or musician (other than an employed actor or musician) acts in a motion picture or performs a concert in Canada. However, the confusion as to when or how it applies may be greater.

The rules that govern whether a non-resident entertainer should register and thus charge GST for their services are based on the concept of "carrying on business in Canada." Unfortunately, the phrase "carrying on business in Canada" is not clearly defined in law and therefore is unclear whether the non-resident entertainer, performing for a production company or promoter should register.

The Canada Revenue Agency ("CRA"), the Governmental agency in charge of administering the tax laws in Canada, has released a 31-page policy document complete with possible scenarios when a non-resident may, or may not be, carrying on business in Canada. There are 12 factors they consider when determining whether a non-resident is carrying on business in Canada. No one factor is determinative, and the CRA goes on to state, "The determination requires judgment in establishing the importance of each factor in light of the type of supply that is being made in the context of the relevant facts". And if that's not esoteric enough, none of the 21 examples provided relate to an actor or musician, so only loosely-based comparisons can be made.

Given no direct examples exist in the policy paper, the CRA was asked to comment and the response was a technical interpretation as it relates to actors. In this interpretation they have provided some degree of clarity. The CRA has concluded that in a simple scenario when an actor comes to Canada to act

in a single movie, they likely would not be considered carrying on business in Canada. However, when that actor performs in multiple movies in Canada or acts in a television series with multiple episodes, that actor would, more likely than not, be carrying on business in Canada.

This provides some degree of clarity for a single occurrence in Canada and may be more readily applicable to a musician who performs in Canada. However, the number of concerts or the number of movies it takes before that threshold is crossed, remains a question. Recently, when dealing directly with the CRA in registration matters they've seemed to focus on the employment test and have been using an arbitrary 21-day threshold. There is however, no jurisprudence and no written commentary to confirm.

If a non-resident entertainer is considered to be carrying on business in Canada, they must register and charge GST. The rate of GST is 5%, however, in some participating provinces the provincial sales taxes are harmonized with the GST to form a harmonized sales tax ("HST"). HST is charged at a rate of between 13 and 15% depending on the province in which you perform. For example in Ontario (where Toronto, the largest city in Canada, is located), the rate is 13%. If you fail to charge GST or HST as applicable, you will be held liable for the tax you failed to charge, plus penalties and interest. Therefore, the stakes for non-compliance may be high.

Aside from the penalties involved, this liability may be mitigated since businesses can recover the tax and as such the non-resident entertainer may be able to track down their customers to recover any taxes assessed. However, these assessments may come years after the fact. In the movie and music industries, it is common that the businesses from whom a recovery can be made, may not be in existence at the time of assessment. Therefore the ability to recover any assessed tax could be difficult and the liability would remain with the non-resident entertainer.

Consequently in many circumstances, the non-resident entertainer is now choosing to mitigate their risks and taking the position that they are, in fact, carrying on business in Canada. As noted above, registering to collect and administer the tax could prove to be a benefit. After registering, any direct GST expense incurred in the course of carrying on the business in Canada (i.e., GST or HST paid on hotels, travel, 50% of meals, supplies, etc.) can now be fully recoverable, as opposed to deductible. Further, Canadian businesses (i.e., the promoter or production company), with whom you will be charging, will not view the tax you charge as an added cost, since the tax will be recoverable to them. The ultimate tax will be borne by the movie-goer when they pay for their tickets at the theatre or the concert-goer when they buy their tickets to the show.

There are also some disadvantages to registering. These include the added compliance burden, the administrative costs of registering and tracking the GST/HST paid and charged, and compliance costs of filing the returns. A GST/HST return is required to be filed on an annual basis if gross revenues are less than $1.5 million and more frequently if income is higher. In addition, non-residents have added registration burdens over and above Canadian resident taxpayers. Given that you are acting as an agent to collect Government funds charged to your customers, the CRA requires all non-residents to post security to ensure the monies are turned over to them. This security can be in the form of cash, or in most scenarios, an insurance bond. Additionally, you must ensure that your records can be made available for a CRA agent to audit, if necessary, either in Canada, or that you will pay for the transportation of an auditor to your location.

GST/HST is yet one more consideration that must be reviewed with your advisor before performing in Canada. Don't get caught singing the blues and proactively determine whether registration is right for you.

No Longer a Myth... American Athletes Pay More in Toronto

July 2017

It's summer in Toronto! This means it's the season for outdoor patios, wearing shorts and for us sports fans, trips to the dome to see our beloved Blue Jays play ball.

But for hockey or basketball fans, we are in the heart of the off-season. It's the time of year when we exchange dreams of wearing the uniform of our cherished Maple Leafs or Raptors, to dreams of wearing a suit and making big financial and personnel decisions for the teams. If you're like me, you have read all the rumours and speculate who we will trade for and who we might sign as free agents. Summer small talk shifts from analyzing last night's big play to debating roster construction, free agency, luxury taxes, hard caps, soft caps and traded player exceptions.

In today's free agency landscape, the athlete holds a lot of the cards. Teams put on presentations and pull out all the stops to woo a player to come, or stay, in their city. It's no different here in Toronto. There are a lot of positive attributes both the Maple Leafs and Raptors can focus on: competitive clubs, a lively, safe and clean city, cosmopolitan atmosphere, fine restaurants and nightlife. Athletes here are also playing for some of the most rabid fan bases on the continent. As far as basketball is concerned, players not only represent a city, but an entire country! However, it's inevitable that at some point, somewhere, someone, will bring up "taxes" as a reason not to come here. As a fan and a tax professional that argument always raises my blood pressure. I've written numerous times on the subject, including this multi-scenario analysis reviewing the options that the Raptors point guard faced in the off-season in 2015. The timing is right to review again, since he faced the very same decisions this off-season.

It's now 2017, have things changed? For starters, the Prime Minister of Canada has wielded his tax sword and raised rates in Canada by 4%. At the same time, there is a new Commander-in-Chief running the United States, and while cuts to Medicare and personal tax rates seem to be his personal goal, it has yet to be seen what will result.

We will again assume that our basketball star will remain a resident of the United States for tax purposes. Most players will leave significant ties back home in the United States and will be able to be considered a resident of the United States for income tax purposes as they return home during the off-season.

For 2017, we analyze the possibility of signing a $24M contract with the Raptors, Spurs (Texas), 76ers (Pennsylvania) and Warriors/Lakers (California), using the tax rate landscape as we know it today.

A few reminders on how U.S. resident athletes are taxed in Canada:

Players are only taxed in Canada on their employment income in Canada. For the Raptors, this means that only their home games are subject to the Canadian tax regime. Therefore, any difference in tax rates (i.e., Canada's top rate of tax of 53.5% versus 39.6% Federal, plus state) is limited to only the days spent employed in Canada. Last season, the Raptors spent roughly 67% of their service time in Canada. Therefore, the remaining 33% of games would be taxed similarly regardless of the team the player played on.
Canada still does not allow most deductions from employment expenses (i.e., agent fees and training costs that are allowable deductions in the United States) further exacerbating the tax gap.
A player will sign for their maximum bonus under the collective bargaining agreement ("CBA"). Based on the tax treaty between Canada and the United States, Canada can only tax signing bonuses at a maximum rate of 15%. Therefore, to the extent any income is subject to a maximum of 15% tax in Canada, a player will receive a full credit against their U.S. taxes for this income thus placing them in no worse off position by playing in Canada.

We have not examined the impact of other cost savings possibilities like retirement compensation arrangements ("RCAs"). The National Hockey League and Major League Baseball currently allow players to take advantage of these arrangements. However, the National Basketball Association ("NBA") currently prohibits the use of these retirement vehicles.
Using all these factors we came to the following conclusions:

From a tax perspective, states with no income tax (i.e., Texas) will yield the lowest overall tax result (approx. $10.5M)
Playing in Ontario is now the worst ($11.5M), followed closely by California ($11.25M) and then Pennsylvania ($10.8M).

So, there you have it. In 2015 when we last examined the numbers, a player would be virtually indifferent playing in New York or California versus Toronto. From an income tax perspective, Toronto is now the worst place to play in the NBA, with a gap of approximately 4% between teams with home games in cities with no state or city tax. Further, if the Republicans are successful in lowering personal and Medicare taxes in the United States, that gap may grow significantly higher.

Therefore, it is important that teams in Canada use whatever tax saving vehicles may be available to their players to ensure their tax bills remain as low as possible. This includes planning to ensure they retain United States residency and the maximization of signing bonuses. From an NBA perspective, the Raptors still hold an advantage in retaining their own players since the CBA allows retaining teams to pay their players larger amounts for longer terms. However in an open field competition for free agents, the Raptors are at a tax disadvantage. So, when Jalen Rose of ESPN argues that players won't want to play in Canada because, "They have to pay Uncle Sam AND the Queen," sadly, the numbers now support his argument.

Residency: Not a Decision to be Left on the Ice

January 2017

So, you've just signed a contract, and are ready to embark on or continue your career as a professional hockey player. But then it blindsides you like an open-ice body check – the realization that you must share part of your earnings with the Canadian Government, the U.S. Government, or both. The questions then become: in which country must you pay income tax, and how much will you pay?

The answers can be surprisingly complex. Let's examine situations in which you would have to file a Canadian personal income tax return.

There are two scenarios in which a professional hockey player is subject to Canadian tax:

1. If he is a resident of Canada, he pays Canadian tax on his worldwide income, no matter where he plays.

2. If he is NOT a Canadian resident, he will pay Canadian tax if he plays on a Canadian-based team. In this scenario, only the games he actually plays in Canada will be subject to Canadian income tax.

As such, the main factor in determining how much Canadian income tax a player must pay is his residency status.

Figuring out where a player resides seems like it should be a simple concept – but in fact, it's not always straightforward. Someone's residency status can only be determined on a case-by-case basis, and takes into consideration several factors (or residential ties).

The primary residential ties in determining if someone is a tax resident of Canada are: the location of his home and where his spouse and/or dependents reside.

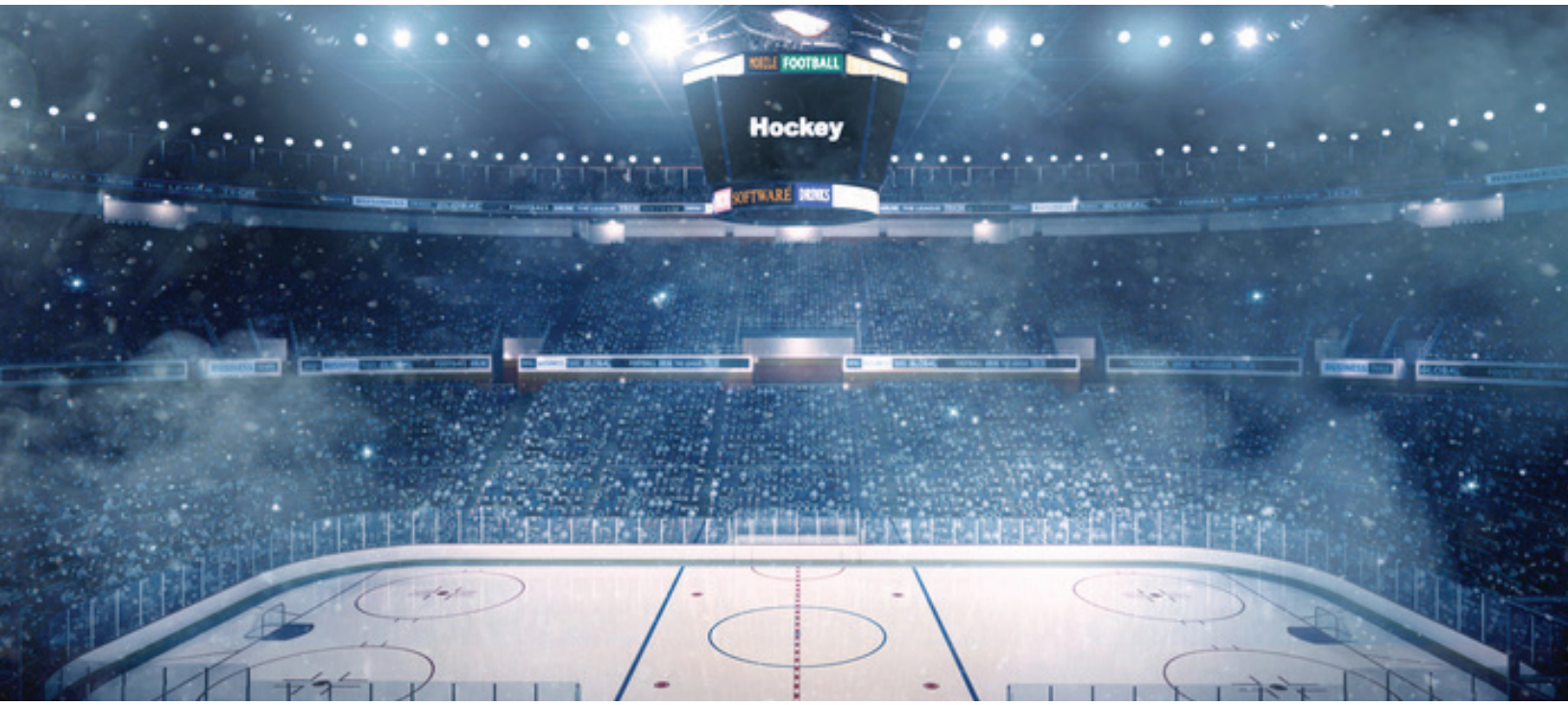
In addition, there are many secondary ties that apply, which a player can examine to assist in his residency determination:

- personal property (cars, clothing, furniture)
- social ties (gym, golf and religious memberships)
- economic ties (bank accounts, RRSP, credit cards, broker accounts)
- hospitalization coverage (health insurance plans)
- origin of driver's license, vehicle registration or passports
- seasonal dwellings or memberships in Canadian organizations

No one secondary tie will bind someone to Canada, but these ties must be considered in determining his residency status. The more secondary ties to Canada a player has, the more likely he is to be considered a Canadian resident.

It often happens that a player will be considered both a resident of Canada and a resident of another country. For such cases, Canada holds tax treaties with many countries – including the United States and most European countries – that include tie-breaker rules. Most modern treaties review first and foremost the location of a person's permanent residence, followed by his social and economic ties. If none of these factors points to one country over another, habitual abode and citizenship are taken into account.

The amount of income tax you pay can vary greatly depending on the state, province or even city you live in. In addition, what may work for you, may not work for your teammate. Through proper arrangement of your affairs, you can stick handle yourself to the appropriate country!!



NHL Trade Deadline: How Tax Advisors Deal with this Stressful Day

March 2017

The NHL trade deadline is an exciting, stressful and nerve racking day. Players, spouses, parents, children and agents are all on edge, refreshing their emails, staring at their phones and trying to keep up with the latest news. But not only is it stressful to those on the ice, but their tax advisors must also be ready for any breaking news.

Some players have the opportunity to go from a worst to first-place team.

Some players have to uproot their family and relocate half way across the country.

Some players have no-trade clauses in their contracts. Not only do they have to consider what it means from an on- and off-the-ice logistics standpoint, but what does this trade do to their pocketbooks?

Aside from the number crunching that will ensue, tax advisors will undoubtedly have to deal with the ever- present question of "what country will you be a resident of for tax purposes?" And your residency can be a significant determinant in calculating the amount of taxes paid.

The Canada Revenue Agency ("CRA") has published guidelines for assisting individuals in determining whether or not they are residents of Canada or have ceased their residency in Canada.

The factors that help determine whether or not a professional athlete is a resident of Canada for tax purposes can be broken out into two categories: Significant Residential Ties and Secondary Residential Ties.

More often than not, the day you cease employment in one country and move to another can, ultimately, be a residency determination date for you. There are potentially significant tax implications on ceasing or commencing residency in one country or another. It is important to review these factors immediately to mitigate possible unwanted tax implications.

Significant Residential Ties

The most important residential ties for determining Canadian residency status are: the location of your home(s), the location of a spouse or common-law partner, and the location of your dependants during the time you are in Canada.

No one of these factors is determinative. For example, on the one hand, if you are playing for a Canadian-based franchise, but your spouse and children are living in the U.S., you may still be considered a resident of Canada for income tax purposes. On the other hand, if you are playing for an American-based franchise but your only home, spouse and dependants are in Canada, it is more likely that you will be considered a resident of Canada.

Secondary Residential Ties

Various secondary residential ties may also be relevant in determining whether or not you are considered a resident in Canada. These secondary ties include the following:

- Personal property (such as vehicles, furniture and clothing);
- Economic ties (such as country of employment, bank accounts, credit cards and retirement savings plans in Canada);
- Driver's license;
- Vehicle registration;
- Health insurance coverage;
- Social ties (such as memberships);
- Seasonal dwellings; and
- Your passport.

Again, no one of these factors is determinative. Secondary ties must generally be considered collectively to determine whether or not they indicate Canadian residency.

As a resident of Canada, you will be taxed on your world-wide income regardless of the fact that you played for an American-based or a Canadian-based franchise.

Over the last couple of years the CRA has been more diligent in challenging the residency status of professional athletes. The determination of your residency status for tax purposes is an important discussion that you should have with your tax advisor on an annual basis.

Whether or not a player actually gets traded on deadline day, the player's tax advisor should always be on top of his tax residency position.

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Performing in Canada: What you need to know about tax refunds

March 2017

Are you a non-resident of Canada who performed a concert or other musical performance on Canadian soil? Did you earn your fees through a personal loan-out corporation or other corporate entity? If so, please read on, as you may be coming up on a deadline and an opportunity you do not want to miss.

Every non-Canadian resident artist who performs a musical performance (or any live show) may be subject to Canadian taxation. For an American artist, there is no treaty-protection for any gross fees earned greater than $15,000 in a calendar year. For most other artists around the world, there may be no treaty protection at all and those artists are subject to Canadian tax on any income earned.

As you are undoubtedly aware, the promoter is required to withhold 15% for Canadian taxes on your gross fees (plus an additional 9% if the performance is in Quebec). However, what many U.S. tax practitioners are not aware of is that this 15% tax withholding is not your final tax liability, but simply represents a prepayment towards your final tax liability.

At the end of each calendar year, the promoter will provide you with an information tax slip, called a T4A-NR, disclosing in Canadian dollars the relevant amount earned for your shows and the withholding taxes that were applied against those fees. Two copies of this slip are produced; one goes to the artist to assist in preparation of his or her Canadian taxes and the other goes to the Canada Revenue Agency ("CRA"), the departmental agency in charge of administering tax collection on behalf of the Canadian Government.

Every non-resident entertainer corporation then must file a Canadian corporate income tax return on or before six months after the end of their taxation year. The Canadian tax return would report the gross income less any expenses relating to the Canadian performance. A federal tax rate (presently, 25%) would apply to the net income earned from these performances.

Failure to file a Canadian return on a timely basis will result in a minimum $2,500 late-filing penalty (and could be substantially higher) per year. And,

provided you never filed your return, there becomes no statute of limitations for the CRA to assess this penalty and request a return. In recent years, it has become common practice for the CRA to review the slips in their possession and issue tax assessments to artists for any unfiled years. Given that the CRA does not have expense information and just data corresponding to the gross revenue earned, the assessments normally create an additional tax liability of 10% of the gross revenue (25% gross versus 15% gross).

Receiving this assessment can be a costly exercise to correct. First, the artist must formally go through an objection process with the CRA. Generally, there is a 90 day window for this objection to occur. Second, since there is no statute of limitations for the CRA to request these returns, we have seen assessments of tax years going back upwards of even five years prior. Therefore, simply getting the information to properly create an income and loss statement to compute the 25% tax can be challenging

Further, assuming you can successfully object to the assessments, your Canadian tax liability will change. In most cases, the 15% withholding on your gross payment will be higher than 25% of your net revenue. This would result in a partial refund of the Canadian taxes paid at source. Thus, foreign tax credits taken on your U.S. (or other foreign) tax return will be overstated. It may be difficult to amend a prior return if a significant time period has lapsed. Therefore, if you are unable to amend a prior return, you may have subjected yourself to a higher global tax rate than otherwise would have been applicable.

To add further insult, Canada has a rule stating that refunds will not be granted if not applied for within three years. Given that Canada has no statute of limitations to request an unfiled tax return and most artists' tax returns result in refunds of Canadian taxes, it is extremely common for many assessments to occur beyond the period when Canada will grant a refund! This often results in a higher global tax liability than would otherwise occur had the return been filed within the proper time period. Therefore, it is imperative to file a Canadian return within the period that Canada will still refund overpayments of taxes.

It behooves you to review all concerts performed dating back to at least 2014 to see if any took place in Canada. If so, and if no Canadian tax return has ever been filed, now is the time to act as time is running out! Further, if you act before the CRA finds you, you may be eligible to enter into the CRA's voluntary disclosures program and avoid the late-filing penalty as well.

Our Clients Speak

Chris R. Moynes, Managing Director, ONE Sports & Entertainment Group

Over the last 15 years as my Sports and Entertainment business has flourished, it has been strongly supported by Jeffrey and his team. My clients are prepared and know the importance of his role in the complex and ever changing world of global and cross boarder taxation.

He is an important part of our team; there is no other professional that I would prefer to have in our corner as he adds value to each and every relationship we enter into. I wouldn't make any major business decision without his guidance and input.

Adam Shaheen, Producer/President, Cuppa Coffee Animation

As our company grew, our accounting and taxation obligations became quite complex, and we found ourselves in need of a professional who was qualified and experienced in accounting and tax and financial planning for the Film Industry. Jeffrey has always been available for any questions that arise and prudent in his recommendations, and has shown himself to be a true partner interested in the growth of our business.

Roy Roedger, President, Second Dimension International

Jeffrey and his team keep my personal affairs and business on track by proactively initiating next steps to keep projects moving forward. He and his team have given me a sense of confidence in the future of my family's finances and that of my business as well. It's great to get a good night's sleep!

The person to person service and level of commitment from your senior leadership is very important to the future of our organization and very much appreciated.

Personal Income Tax Organizer

Customized For Professional Athletes

It's that time of year again...

And to help you through it, we have released the 2017 edition of our Personal Income Tax Organizer specifically for athletes. This tool will assist you in gathering the information and documentation necessary for the preparation of your 2017 tax return(s).

Contact a member of our team to have the organizer sent directly to you.

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