UK Tax Breaks for the 2014 Commonwealth Games in Glasgow

In this note, the author outlines the various tax concessions contained in Finance Act 2013 for non-UK resident athletes involved in the 2014 Commonwealth Games in Glasgow in respect of income related to the event.

1. Introduction

Foreign sports stars competing at the 2014 Commonwealth Games (the 2014 Games), which are to be held in Glasgow, Scotland, will be exempt from taxation in the United Kingdom. Finance Act 2013 contains measures to provide tax breaks for non-UK resident athletes involved in the 2014 Games in respect of income related to the event. In order to attract overseas sports stars to the competition and ensure their smooth participation in the 2014 Games, the government decided to exempt non-resident athletes from UK taxation on income related to their Glasgow 2014 performances.

2. The Commonwealth Games

The Commonwealth Games is an international, multi-sport event involving athletes from the Commonwealth of Nations. The first such event, known back then as the British Empire Games, was held in 1930 in Canada. The name changed to British Empire and Commonwealth Games in 1954, to British Commonwealth Games in 1970 and assumed the current name of the Commonwealth Games in 1978. Held every four years, the Games are regarded as the third largest multi-sport event in the world, after the Olympic Games and the Asian Games. The event typically involves around 5,000 athletes. Although there are 53 members of the Commonwealth of Nations, 71 teams participate in the Commonwealth Games, as a number of British overseas territories. Crown dependencies and island states compete under their own flag. The four home nations of the United Kingdom – England, Scotland, Wales and Northern Ireland – also send separate teams. There are a total of 21 sports and a further seven para-sports categorized into three different types: core, optional and recognized. Core sports must be included in each programme. Apart from many Olympic sports, the Games also include some sports that are played mainly in Commonwealth countries, such as lawn bowling and netball. The Games are overseen by the Commonwealth Games Federation, which also controls the sporting programme and selects a host city. In 2014, the XX Commonwealth Games are being held in Glasgow, Scotland from 23 July to 3 August.

3. General UK Law

Section 27 of 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 sports persons employment and self-employment income, respectively, where connected to a performance that takes place in the United Kingdom. Without the exemption provided by the special legislation, non-resident sports persons would be taxed in the United Kingdom on both their income gained as a result of their performance at the 2014 Games, plus a proportionate share of their worldwide sponsorship income.

4. 2014 Games Tax Break

Special legislation has been enacted for the 2014 Games to exempt non-resident athletes from any tax liabilities. As a result, the event in Glasgow will have its own tax regime, which constitutes a substitute for the general principles of taxation in force in the United Kingdom. The tax measure enacted to protect overseas athletes' income from general UK income tax charges is contained in section 9, chapter 2, part 1 of Finance Act 2013. Following agreement by both Houses of Parliament on the text of the legislation, the Act received Royal Assent on 17 July 2013.

Pursuant to section 9(1) of Finance Act 2013, an accredited competitor who performs a Commonwealth Games activity is not liable for income tax in respect of any income arising from the activity if the non-residence condition is met. The terms used in this provision are defined in subsequent clauses of section 9.

The term ‘accredited competitor’ means a person to whom a Glasgow 2014 accreditation card in the athletes’ category has been issued by the company named Glasgow 2014 Limited, which was incorporated on 11 June 2007. The scope of the exemption is hence determined by the accreditation system for the 2014 Games. To qualify for tax relief, an individual needs to be accredited as an athlete. Other accreditation categories are not covered by the special tax measure. Moreover, the competitor must be a non-UK resident. Under subsection 3 either of the following non-residence conditions must be met:

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1. UK: Finance Act 2013, National Legislation IBFD.
(1) the accredited competitor is a non-UK resident for the tax year in which the 2014 Games activity is performed; or

(2) the accredited competitor is a UK resident for the tax year in which the activity is performed but the year is a split year with regard to the competitor and the activity is performed in the overseas part of the year.

It follows from the two conditions that the measure is applicable only to foreign sports persons competing in the 2014 Games. Such a limitation of the personal scope of the exemption results in the exclusion of non-UK resident individuals who provide essential technical, medical, media or support services for the event (for example, judges, referees, coaches, doping testers, doctors, managers, journalists, photographers, technicians and radio or television workers), as well as any non-resident officials, sponsors or temporary staff who will continue to be liable for UK tax on any income that is related to their involvement in the event. Furthermore, it will not apply to any UK tax residents, including athletes, except those for whom the year is a split year and where the event falls into the overseas part of the year. Given the complexity of the UK tax residence rules, this rule is of particular concern to persons who are considered UK tax residents under UK law in the tax year of the 2014 Games. It should be noted that although non-resident sports persons will not be subject to UK income tax on income related to the 2014 Games, they may still be liable for tax on this income in their home countries.

Overseas competitors are tax exempt in respect of any income arising from a Commonwealth Games activity. First, the term ‘income’ means employment income or profits of a trade, profession or vocation (including profits treated as arising as a result of section 13 of ITTOIA 2005). Second, pursuant to the definition contained in section 9(2), the following are Commonwealth Games activities:

(1) competing at the 2014 Games; and

(2) any activity that is performed during the Games period the main purpose of which is to support or promote the Glasgow Commonwealth Games or any future Commonwealth Games.

Third, the activity must be related to “the Glasgow Commonwealth Games”, which means the Commonwealth Games held in Scotland in 2014.

Under this rule neither employment nor self-employment income arising in the hands of non-UK resident accredited competitors from competing in or carrying out activities primarily to support the Glasgow 2014 Commonwealth Games will be subject to UK income tax. The exemption is to apply to income related to a Commonwealth Games performance, such as prizes and awards, bonuses or premiums. It will also catch any income from the provision of services supporting or promoting the Commonwealth Games. The explanatory note on this measure does not clarify the scope of such activities but it seems that the exemption covers endorsement income of non-resident players received from the 2014 Games organizers, sponsors or global commercial partners of the Commonwealth Games. The wording of this measure suggests that athletes may be subject to tax on income from sponsorship or advertising contracts concluded with companies who are not official sponsors of the 2014 Games or in respect of services provided to sponsors but not directly related to the Commonwealth Games. If a competitor has a long-term endorsement or sponsorship contract that is not directly linked to the 2014 Games, any payment under the contract that would normally be chargeable to UK tax will still benefit from the exemption if it is in respect of an activity, the main purpose of which is to support or promote the 2014 Games or any future Commonwealth Games. Such payments are then pro-rated excluding the performance at the 2014 Games.

The relief does have a time framework. To qualify for the exemption, the income-generating activity must be performed during the Games period. Under subsection 5, “the Games period” means the period beginning 4 March 2014 and ending 3 September 2014. The Games take place from 23 July to 3 August but the measure extends to before and after the Games to catch all supporting or promotional activities related to the event.

To make the measure complete and comprehensive, the withholding obligation is waived in respect of payments that constitute income covered by this tax relief. Pursuant to subsection 4, section 966 of Income Tax Act 2007 (deduction of sums representing income tax) does not apply to any payment or transfer that gives rise to income benefiting from the exemption under subsection 1. This means that although the United Kingdom normally levies a 20% withholding tax, subject to the right to deduct expenses at source and an optional income tax settlement at the end of the year, the athletes participating in the 2014 Commonwealth Games will receive their gross fees free from any deduction. They may still be required to pay taxes in their residence states.

5. International Dimension of the Personal Scope of the Exemption

Under these provisions, no liability for income tax will arise in respect of income from the 2014 Commonwealth Games received by foreign competitors participating in the championships. Income earned by non-UK resident staff and officials or by athletes and officials who are resident in the United Kingdom will still be subject to UK income tax. Should a UK-resident competitor be involved in the event, they will not benefit from the exemption. Such an approach is based on the fact that the United Kingdom has the right to tax its resident athletes regardless of where the event takes place. Giving up taxing rights with respect to non-residents makes participation in the event more attractive to those caught by UK taxation based on territoriality. The explanatory note on the provisions at issue emphasized that the measure benefits non-residents, who are likely to belong to non-UK ethnic or national groups. The measure will also benefit non-resident disabled competitors through the para-athletic element of the 2014 Games.

4. UK Income Tax Act 2007 (ITA); National Legislation IBFD.
At first glance it seems that non-competing members of the overseas teams participating in the 2014 Games, such as foreign support staff, as well as non-resident officials, foreign journalists, temporary workers, etc. will be worse off if they earn income from the event than their competing colleagues who hold a Glasgow 2014 accreditation card in the athletes' category. However, it should be noted that there was actually no need to cover non-athletes because they are tax exempt in the United Kingdom under tax treaties. However, this is valid only for those individuals who can benefit from the UK network of tax treaties with Commonwealth countries. As a rule, tax treaties contain provisions similar to article 7 of the OECD Model (2010) for companies and self-employed individuals and article 15 for employees, alongside article 17 for sportsmen. Articles 7 and 15 allocate the primary taxing right to the residence country, disallowing taxation at source if, respectively, the taxpayer does not have a permanent establishment (PE) in the source country or is present there for less than 183 days during a tax year and receives income from a non-UK employer (and not from a UK PE of a non-UK employer). Due to the short duration of the Commonwealth Games, most persons not covered by the Glasgow tax exemption and resident in treaty countries will escape taxation in the United Kingdom in any event. For example, non-resident coaches and officials or employees of foreign broadcasters may already be exempt from UK taxation under the terms of a tax treaty.

With regard to athletes, article 17 provides an exception from the general rules on taxation of business profits and employment income. It assigns full taxing rights with respect to income earned by sportsmen to the country of performance, regardless of the time spent there. If it were not for the 2014 Games exemption, the United Kingdom would have had the right to collect tax on income connected with the event earned by competitors resident in tax treaty countries. It might seem that, in practice, the Glasgow tax exemption merely equates the situation of sportsmen covered by article 17, who would otherwise be taxable at source, with that of taxpayers covered by articles 7 (the self-employed and companies) and 15 (employees) of UK tax treaties, pursuant to which the taxing right is allocated to the residence state. However, this is only true for residents of tax treaty countries. Media workers and other individuals from non-treaty jurisdictions may still be liable for UK tax charges if they cannot benefit from tax treaties.

The United Kingdom has unilaterally given up its taxing right with regard to the 2014 Games-related income, but the residence countries of the competitors still have to take the relevant tax treaties into consideration. Depending on the provisions of the applicable treaty, the residence country must apply the tax credit or exemption method for the avoidance of double taxation. Since there is no withholding tax in the source country, the credit method would not influence the tax assessment in the country of residence. The taxpayer would be taxed in full on his foreign income and no foreign tax would be available to set off against the domestic tax. Under the exemption method, the taxpayer would enjoy double non-taxation of foreign income given the tax relief offered by the source country.

6. Conclusion

The exemption announced for the 2014 Games is similar to the income tax exemption provided for non-resident competitors who took part in the London 2012 Olympic and Paralympic Games. The intention of the government, expressed in the explanatory note, was to help prolong the legacy of the London 2012 Olympic and Paralympic Games, and spread that legacy to Scotland. The fact that exempted individuals will not need to fill out tax returns with regard to income covered by the relief will reduce the administrative burden on them and on the tax administration. Still, the scope of the 2014 Games relief is relatively narrow given that it only applies to non-resident competitors in respect of any income received as a result of their performance at Glasgow 2014, or as a result of any activity carried out during the period for which athletes' accreditation cards are valid (accreditation period) where the main purpose is to support or promote Glasgow 2014 or future Commonwealth Games. This measure marks another example of the UK approach to enacting legislation for major international sporting events. Tax breaks are agreed to on an event-by-event basis and are not identical. Some events, such as the 2015 Rugby World Cup, do not benefit from any UK tax exemptions, whereas a tax exemption similar to that described was also put in place for non-resident competitors in the 2011 and 2013 Champions League finals and for athletes participating in the 2013 British Athletics Anniversary Games. It seems, however, that the government takes a reactive approach and is not ready to enact a comprehensive tax exemption for all major sports events to be held in the United Kingdom.