Belgium:

International transfers of professional football players

BY PIETER DEBAENE[1] AND DAAN BUYLAERT[2]

An international transfer of a football player from one professional club to another may cause various financial streams with specific tax ramifications with sometimes doubtful solutions. The purpose of this comparative survey will be to analyse the most common tax ramifications and how these are dealt with in the national systems of several countries. The survey shall cover the tax treatment of the income paid to the player and other payments, such as agent's fees or commission fees from the point of view of the player and agent. There may also be consequences for other parties involved, e.g. parties owning part of transfer rights etc. In a later issue of GSLTR we will also look at the position of the clubs and the VAT consequences.

Player X's tax ramifications

Suppose Player X, who is resident for tax purposes in Belgium, is transferred at the end of July on a permanent basis from a Belgian club to club C located in state C.

1 Will Player X cease to be a Belgian tax resident upon the transfer to state C for the fiscal year in which the transfer occurs? Will Player X acquire state C tax residence in the same fiscal year in which the transfer occurs?

Under Belgian tax law, an individual is considered to be a Belgian resident for tax purposes if his/her place of residence (or domicile) is located in Belgium. Place of residence refers to the location where an individual effectively resides with the intention of making it his/her principal place of residence. Whether or not the place of residence is situated in Belgium must be analysed based on the specific facts and circumstances involved. Family, social, professional, economic and cultural ties are all taken into account.

1 Attorney-at-law at Tiberghien Lawyers.
E-mail: pieter.debaene@tiberghien.com.

2 Attorney-at-law at Tiberghien Lawyers.
E-mail: daan.buylaert@tiberghien.com.

The place of residence is characterised by a certain degree of permanence. However, no minimum duration is provided for by law.

Belgian tax law sets out two *legal presumptions* under which a person's place of residence is deemed to be located in Belgium:

- Until proven otherwise, an individual's place of residence is deemed to be located in Belgium, if the individual is registered in the Belgian National Register of Individuals.
- The place of residence of married or legally co-habiting individuals is irrefutably deemed to be located where the household (partner and/or children) is established.

If an individual's place of residence is not located in Belgium, then the individual will still be considered as a Belgian tax resident if his/her *seat of wealth* is located in Belgium. The seat of wealth is the place where the management of one's wealth takes place, which is not necessarily where an individual's assets are effectively located.

An individual is a tax non-resident if either his/her place of residence or seat of wealth is not located in Belgium.

Belgian tax residents are taxable in Belgium on their worldwide income, i.e. for both their Belgian and non-Belgian source income. Double tax treaties may however apply, resulting in an exemption of foreign source income.

A *"split year treatment"* applies to individuals taking up or ceasing Belgian tax residency.

Here, for example, if Belgian player X is transferred abroad during the summer transfer window, then the tax residency change will take effect from the transfer date, unless the facts and circumstances demonstrate otherwise. Player X must then file a so-called *"special tax return"* within the three months following his departure, in which he must declare his worldwide income for the period from 1 January of the relevant tax year until the transfer date.

If player X derives any type of Belgian source income following the transfer to club C, then player X will be

taxable in Belgium on this income as a non-resident (assuming the applicable double tax treaty assigns the taxing rights for this income to Belgium).

1.1 What is the tax treatment for income tax purposes in Belgium of any payment made by a Belgian club to player X upon the termination of the employment relationship?

Payments made by the Belgian club to player X upon the termination of the employment relationship will be considered as taxable employment income under Belgian tax law.

The applicable tax treatment will depend upon the nature of the payment.

Outstanding wages or bonus payments for previous performances will be taxed in the same way as player X's salary.[3]

However, termination or severance payments will be taxed at the average tax rate of the most recent preceding year during which the taxpayer had a normal 12-month professional activity; this approach is to limit the disadvantageous effect of the marginal tax rate in the top tax brackets.

1.2 What is the tax treatment for income tax purposes in Belgium of any payment made by a foreign club to player X upon the termination of the employment relationship?

If the payment is made by the foreign club prior to player X's arrival in Belgium, then no Belgian tax consequences will arise, as the income was derived before taking up Belgian tax residency. The payment will not be taxable in Belgium under Belgian domestic tax law, nor need it be declared in a Belgian income tax return.

If the payment is made by the foreign club following the player's arrival in Belgium, then the income will, in principle, be taxable in Belgium under Belgian domestic tax law rules as part of the player's worldwide income. However, if a double tax treaty between Belgium and the other jurisdiction (OECD Model Tax Convention) allocates the taxing rights to the other jurisdiction, then Belgium will exempt the income with progression. This will result in the payment upon termination being taken into account in determining the tax rate applying to the non-exempt income.

Please note that, in practice, questions can arise about whether payments received by a player upon termination can be fully covered by art. 17 of the double tax treaty (OECD Model Tax Convention), as it is often unclear whether these are "closely connected" to a specific sports performance. Depending on the circumstances of the case, the income might fall under the distributive rule of art. 15 (employment income) or even art. 21.

1.3 What is the tax treatment of one time payments once re-transferred? E.g. player X is entitled to a percentage of any transfer sum in the event of a future transfer. Which country is entitled to tax such payment?

We understand that the Belgian club would pay player X a percentage of the transfer sum received upon his transfer to club C.

Under Belgian tax law, all benefits derived by an employee by reason or on the occasion of his/her professional activity are, in principle, deemed taxable employment income. This situation means that a causal link must exist between the employment and the benefit for the benefit to qualify as taxable employment income. The existence of a causal link is broadly interpreted by the tax authorities.

Although not specifically stated in Belgian tax law, it is very likely that the Belgian tax authorities will deem the percentage of the transfer fee to constitute taxable employment income in the hands of player X, considering the link between the payment and the player's employment in Belgium.

However, each case must be analysed to take into account all the factual circumstances and relevant contractual provisions relating to the specific payment.

The timing of the payment will determine whether the individual will be taxable as a Belgian resident or as a Belgian non-resident (see 1.1 and 1.2 above).

1.4 What is the tax treatment of the payment of the agent fees by club B or club C on behalf of player X and in which country will the payment be taxed?

Here, the agent's fees for services provided to the player (e.g. based on a representation agreement between the player and agent) are paid by the club directly to the agent on the player's behalf. This is different from the situation in which the club makes payments to the agent relating to services provided by the agent to the club.

In paying the agent's fees on behalf of the player, the club as such bears a cost to which the player is personally held liable. Following the principles of Belgian tax law set out above, this payment would, therefore, in principle, be considered as a taxable benefit-in-kind in the hands of the player. If the agent's fees are paid by a Belgian club, then this payment would generally also trigger the obligation in the hands of the football club to withhold Belgian withholding tax from the player's salary upon the payment of the agent's fee.

3 Individuals subject to Belgian personal income taxes are in principle taxed on a progressive basis. Tax rates vary from 25% to 50% (excluding municipal taxes) depending on the applicable bracket. The highest bracket applying for income higher than € 8,830 (income tax year 2017) results in the 50% tax rate. Sportsmen can however benefit from a special tax regime according to which income under the cap of the flat rates (i.e. € 19,670 for income year 2018) is taxed at 16,5% and 33% depending on whether the sportsman involved is younger or older than 26 years.

Although the payment of the agent's fee on behalf of the player would, in principle, qualify as a taxable benefit-in-kind, it could under specific circumstances, based on Belgian case law, be argued that the agent's fee, in its turn, may then constitute a tax-deductible professional expense in the hands of the player, which would neutralise the player's tax liability. Despite the absence of any case law or disputes with the Belgian tax authorities about the qualification of agent's fees as benefits-in-kind, we deem this issue to be extremely important, and one which is often discarded by (Belgian) clubs.

Suppose player X, resident for tax purposes in Belgium, is transferred end of July on a loan basis from club B in Belgium to club C located in state C.

2 Will player X cease to be a Belgian tax resident upon the transfer to state C for the fiscal year in which the transfer occurs? Will player X acquire state C tax residence in the same fiscal year in which the transfer occurs?

In this respect, see the analysis of Belgian tax residency under 1 above. If the player is only transferred to the foreign club on a loan basis, then it is more likely that the player will still be considered as a Belgian resident for tax purposes. However, a factual assessment must always be made to take into account all the criteria set out above regarding the place of residence, e.g. family links, place of domicile, and also the duration and terms of the loan agreement. The stronger the links with Belgium, as set out under 1 above, remain, then the less likely that the player's tax residence will change.

The same applies for the situation in which a foreign player would be transferred to Belgium on a loan basis. As it is required that the place of residence is characterised by a certain degree of permanence, it is likely that the foreign player is considered to be a non-resident for Belgian tax law purposes for the duration of the loan.

2.1 Should player X continue to be paid by club B, what is the tax treatment in Belgium and state C of such payment for income tax purposes?

If player X continues to receive income from the Belgian club whilst on loan with a foreign club, then the taxation will vary depending upon the player's tax residence.

If the player does not cease residence under Belgian tax law, then the player will remain taxable on his worldwide income in Belgium. However, if a double tax treaty is concluded between Belgium and the other jurisdiction (OECD Model Tax Convention), then the salary derived from the sports activities exercised abroad will be taxable in the jurisdiction in which these activities are exercised. As such, the player will be able to claim exemption with progression in Belgium.

However, if the player ceases to be a tax resident in Belgium, then he will no longer be liable to tax in Belgium on the salary paid to him by the Belgian club relating to his sports activities in state C during the loan period.

In the reverse scenario, in which a player would be transferred from a foreign club on a loan basis to a Belgian club and the foreign club continues to pay the player's salary, the salary relating to the player's football activities in Belgium will be taxable in Belgium. Depending on whether the player would take up Belgian tax residence, he might also be required to report his other worldwide income in Belgium (and potentially claim exemption with progression in Belgium).

2.2 Should player X be paid by club C, what is the tax treatment in state C and Belgium of such payment for income tax purposes?

If the player is transferred by a Belgian club to a foreign club on a loan basis and the latter pays the player's salary, then the tax treatment will vary depending upon the player's tax residence. If the player still qualifies as a Belgian tax resident, then his worldwide income remains taxable in Belgium. However, if a double tax treaty is concluded between Belgium and the other jurisdiction (OECD Model Tax Convention), then the salary derived from the sports activities exercised in state C will be taxable in the jurisdiction in which these activities are exercised (subject to the domestic tax law of state C). As such, the player will be able to claim exemption with progression in Belgium. Should the player cease to be a Belgian tax resident, he will no longer be liable to be taxed in Belgium.

In the reverse scenario, in which a player would be transferred from a foreign club on a loan basis to a Belgian club and the Belgian club pays the player's salary, the salary relating to the player's football activities in Belgium will be taxable in Belgium. Depending on whether the player would take up Belgian tax residence, he might also be required to report his other worldwide income in Belgium (and potentially claim exemption with progression in Belgium).

2.3 What is the tax treatment of the payment of the agent fees by club B or club C on behalf of player X and in which country will the payment be taxed?

See 1.4. above.

Commission agent's tax ramifications

1 What is the tax treatment for income tax purposes of fees paid to the agent involved in the negotiation of the transfer?

1.1 Where the agent is resident in a treaty jurisdiction.

The agent's fees will not be taxable in Belgium, unless they are attributable to a Belgian permanent establishment through which the agent carries out his/her business.

1.2 Where the agent is not resident in a treaty jurisdiction.

The agent's fees will not be taxable in Belgium, unless they are attributable to a Belgian permanent establishment for Belgian tax law purposes through which the agent carries out his/her business.

It is important to note that if the payment is made by a Belgian club, under Belgian tax law, Belgian companies are obliged to report payments exceeding 100,000 (within one tax year) made directly or indirectly to beneficiaries located in certain black-listed jurisdictions.[4]

1.3 Where the fee is paid by club B in Belgium.

Reference should be made to paragraphs 1.1 and 1.2. above to determine the applicable tax treatment. No Belgian withholding tax generally applies to payments made for fees by a Belgian club or the payer.

1.4 Where the fee is paid by club C in state C.

See 1.3. above.

1.5 Where the fee is paid by player X.

See 1.3. above. The reporting obligation under 1.2 above does not apply if the payment is made by individuals.

4 The criteria for determining whether a jurisdiction is black-listed are as follows:
– certain jurisdictions included in the royal decree of the Belgian Income Tax Code that are not subject to income taxes or are subject to low income taxes; and
– certain jurisdictions that are regarded as non-compliant by the OECD Global Forum on Transparency and Exchange of Information for Tax Purposes.