

## **Back of the net?**

*Danielle Ford and Riocard Hoye explain why HMRC's big match against the football industry is just kicking off*

HMRC has always maintained an interest and focus on the football industry in the UK and this has recently extended to issuing Code of Practice 9 (COP 9) enquiries.

The main reason this industry will continue to be a target, simply, is the money produced within it. In 2021/22, the Premier League alone generated £5.5 billion in revenue, which includes players, managers and other staff on eye-watering wages. There are similarly large numbers involved in transactions such as transfers and contract renewals.

In addition to the money, the industry is unique and contains lots of complexities. Whilst transactions between clubs in different leagues within the UK are common, many transfers and deals involve clubs overseas, particularly in the Premier League and Championship. This offshore element adds another layer of complexity and presents its own challenges.

A further complication is that transactions often involve lots of parties. Whilst a player transfer should theoretically involve the player, the buying club and the selling club, in reality each party will have agents, lawyers and other intermediaries assisting in the deal.

The deals themselves are also complex. Player transfers are often structured with conditional clauses or add-ons, which can amount to millions of pounds in additional fees, subject to the transfer meeting certain criteria. Similarly, player contracts will contain add-ons to the base salary, such as appearance and win fees, in addition to payments for the use of their image rights. HMRC has previously expressed concern over the structuring of deals involving image rights.

Due to the sums of money involved, and also the inherent level of complexity, it can be seen that small mistakes in tax filings can result in significant amounts of tax not being collected. In HMRC's view, compliance activity in this industry can generate high returns for less effort compared to other industries. We understand that HMRC has a dedicated team reviewing the UK football pyramid and related issues.

It has recently been reported that there were 329 professional footballers under investigation in 2021/22, which is a record number, up from 93 in the season before. It is not just those kicking a ball – agents and even football clubs have not escaped the spotlight, with 91 agents and 31 clubs reportedly also under investigation.

For those in the world of football, it appears there has never been a time where they are more likely to be scrutinised by HMRC, which has more information than ever at its fingertips. Remember, an HMRC investigation can be extremely costly and time consuming.

### **What is Code of Practice 9?**

COP9 is HMRC's most serious civil investigation type, which carries an allegation by HMRC of fraud or deliberate behaviour leading to a tax loss. Only the largest and most egregious cases of tax avoidance will meet HMRC's internal guidance of being eligible for COP9. Due to the size of transactions involved, and therefore the potential lost tax, many cases in the football industry will meet these guidelines.

COP9 is one step away from criminal prosecution and is seen as the 'last chance' by HMRC – make a full disclosure and pay the tax in exchange for avoiding criminal prosecution. The COP9 process invites a disclosure under the Contractual Disclosure Facility (CDF) where all tax matters are fully disclosed and HMRC will fully investigate this disclosure to ensure it is correct and complete. In those cases where the disclosure is not correct or complete, HMRC reserves the right to issue criminal proceedings and it is likely they would do so for those who abuse the process.

We strongly recommend seeking specialist advice as soon as the CDF is issued, as most accountants do not have the expertise to deal with COP9. In addition, you have 60 days within which to respond and make an initial disclosure which cannot be extended. It is this initial disclosure which offers the protection from criminal investigation so it really is key to the whole process.

### **What are the issues HMRC is looking at?**

HMRC has recently been targeting football agents, where COP9 enquiries have been issued in relation to commission payments. HMRC is likely to hold concrete information on such transactions and must believe they have strong evidence of deliberate behaviour for them to allege tax fraud.

HMRC has also been looking into 'dual representation contracts' in the Premier League. This is where the same agent represents both the player and the club in transfers, negotiations, or new contracts. Dual representation is prohibited by FA rules, however, it can be allowed if all parties provide written consent. Under this practice, the portion of the fee relating to work for the club avoids VAT, Income Tax and National Insurance. FA data in 2021 showed that 68% of Premier League player deals were completed with dual representation.

In 2021, HMRC updated its guidance on this issue and tightened the rules by stating agents and clubs need to keep records of evidence that agents are legitimately working on both sides of the contract, as well as showing the extent to which they represent the club and the player, rather than just splitting it 50/50.

The fact that HMRC is investigating dual representation shows it has concerns over the legitimacy of the splits used and the level of work the agent undertakes for both parties. The fact that COP9 is being used to do so signifies that in some cases, these contracts would have been deliberately or fraudulently manipulated in order to avoid tax.

### **In summary**

HMRC's recent activity shows that no matter who you are or how much you earn, you are expected to pay the right amount of tax and there will be repercussions if you do not.

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