Back of the net

Patrick Way KC examines how overseas workday relief works in relation to Premier League footballers

When a non-domiciled individual arrives in the United Kingdom and becomes UK tax resident there is a three-year window in which the individual's earnings for overseas activities which are paid abroad and kept abroad are relieved from UK tax. This is called 'overseas workday relief'.

The question is whether a non-domiciled international footballer, playing for an English Premier League club, can satisfy the overseas workday relief provisions (in respect of his Club contract) when playing for his country abroad

On the face of it, the relief should be available.

Overseas workday relief

The rules in relation to overseas workday relief are found in ITEPA 2003 ss.26 and 26A. For ease they are included in a separate box.

Before we look at the position relating to an international footballer it may be useful to set out the way in which overseas workday relief operates generally speaking.

In order to claim the relief you need to be classified as a non-domiciliary in the UK and to be utilising the remittance basis of taxation. Further, you need to have been considered a non-resident of the UK for the three previous years before you came to the UK, whilst you will nevertheless be a UK tax resident for the year in which you claim the relief.

Then, here comes the key, some or all of your work duties must be performed outside the UK.

On this basis the amount of your earnings which relates to overseas duties will not give rise to UK taxation provided it is received abroad and kept abroad.

There are some important facts to bear in mind.

You must make sure that your foreign-earned income is paid into an eligible non-UK bank account and that you do not remit the earnings into the UK unless you want to pay tax on the amounts remitted.

You should keep accurate records of your movements abroad and you should also have proper work records to show that you have not remitted any foreign earnings into the UK.

The general advice therefore is to make sure that the income in question (your foreign-earned income) is paid directly into an eligible non-UK bank account, which satisfies the rules so as to be a qualifying bank account when you make your claim for the relief. To be eligible the bank account must be in your own name and must have at least £10 at the beginning of the tax year.

The simplest thing to do is to make sure that the bank account only ever receives employment income and nothing else and then you can pay out sums into the UK which you need for living expenses but the balance that you leave behind will not be subject to UK tax.

The particular point to focus on (when we look at the issues relating to an international footballer) is that in order to obtain the relief you must prove that you conducted work outside the UK for a UK employer.

In this respect, you will need to have a sensible method of demonstrating how much of your earnings relates to overseas activities and how much onshore activities.

For example, assume that you spend half of your time overseas and you satisfy the relief. On this basis, half of your general earnings should be outside the scope of tax so long as it has been paid and retained overseas into an overseas bank account. Obviously, as mentioned, if and when you pay those overseas monies into the UK there will be tax on the remittance basis.

Our international Premier League footballer

From time to time, I have been asked about overseas workday relief in respect of the Club earnings of Premier League footballers during the time when they are on international duty. Specifically, the question is whether those footballers can claim overseas workday relief whilst playing for their country in circumstances where, of course, the relief will be in respect of their Club earnings. Put another way: even though the principal reason for the player being abroad is by virtue of his international obligations can the relevant Club earnings benefit from overseas workday relief?

Let us examine the position in order to find the answer.

Assume that you have a Premier League footballer who satisfies the criteria for overseas workday relief (in respect of his Club earnings) because he is non-domiciled and has an overseas bank account into which his earnings are paid and he satisfied the rule of being non-resident before the three-year period started (see ITEPA 2003 s.26A for the precise three-year rule).

Let us assume that this individual plays for a football club in the Premier League. For the sake of argument, let us assume his club is Arsenal. Equally, let us assume that the individual is domiciled overseas and plays for Spain.

Then, let us assume that the individual travels with Spain to play in the World Cup (outside the UK). And let us also assume that Arsenal continue to pay his salary throughout the whole period that he is away with his country. Arsenal will be bound to continue to pay his Club salary because this is a requirement of the standard Premier League contract.

The question is whether any of the salary which Arsenal pay to the individual during the time that he is away playing for Spain can count for overseas workday relief (assuming all the other criteria are satisfied) in respect of his Arsenal earnings.

In my view, overseas workday relief should be available for the following reasons.

First, one can demonstrate that under the terms of the player's Club contract he is obliged to go abroad with his country on international duty. Again, the standard Premier League contract includes such a requirement.

Secondly, the player will remain subject to the relevant terms and conditions of his Club contract even when on international duty. For example, he will typically be subject to disciplinary requirements. This means that he will have to behave appropriately and if he misbehaves he runs the risk of losing his employment with the Club. Therefore it can be seen

that he is still subject to the terms of his Club contract even when playing abroad for his country.

Thirdly, in my experience, such a footballer will usually be required to participate in his Club's TV programmes whilst on international duty. This is on the basis that many clubs have a dedicated TV channel these days. In other words, the Club can require him to attend Club interviews whilst on international duty: this is another reason for saying that he is bound by his Club contract even when playing for his country.

So, pausing there, one can see why the footballer should be able to get overseas workday relief for his Club earnings that arise during the time that he is abroad with his country.

One issue that arises – and this is important – is that in order to get the relief the player needs to be able to demonstrate that he conducted his Club employment (in respect of which the relief is sought) outside the UK for a UK employer. And the risk, I suppose, is whether it might be said that, whatever the Club contract may say, the player is abroad on country (not Club) commitments.

In my view that is not a valid argument: the player is paid by his Club whilst employed by the Club and whilst subject to the Club contract he signed.

I should say that I have been asked this question (can international Premier League players get overseas workday relief?) three times by very bright advisers (the best in the business as it happens) and all three of them consider that the relief should be available. I agree.

Conclusion

In summary, there are good technical reasons why the relief should be available.

Accordingly, footballers should certainly consider claiming the relief and should then make a full disclosure in their tax return.

After all, as mentioned in this article, the reality is that the player is paid whilst he is abroad and is subject to his Club's contract. The fact that the driving force for his being abroad is his obligations to his country should not negate the fact that he remains under contract with his Club whilst he is abroad, is being paid whilst he is abroad by the Club, and continues to be subject to the Club contract.

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SCHEDULE – ITEPA 2003 ss.26 and 26A

26 Foreign earnings for year when remittance basis applies and employee meets section 26A requirement

(1) This section applies to general earnings for a tax year where section 809B, 809D or 809E of ITA 2007 (remittance basis) applies to the employee for that year and the employee meets the requirement of section 26A for that year, if the general earnings meet all of the following conditions:

(a) they are neither—

(i) general earnings in respect of duties performed in the United Kingdom, nor

(ii) general earnings from overseas Crown employment subject to United Kingdom tax, and

(b) if the tax year is a split year as respects the employee, they are attributable to the UK part of the year.

(2) The full amount of any general earnings within subsection (1) which are remitted to the United Kingdom in a tax year is an amount of "taxable earnings" from the employment in that year.

(3) Subsection (2) applies whether or not the employment is held when the earnings are remitted.

(4) Section 28 explains what is meant by "general earnings from overseas Crown employment subject to United Kingdom tax".

(5) See Chapter A1 of Part 14 of ITA 2007 for the meaning of "remitted to the United Kingdom", etc..

(5A) Any attribution required for the purposes of subsection (1)(b) is to be done on a just and reasonable basis.

(6) Section 15(1) does not apply to general earnings within subsection (1).

26A Section 26: requirement for three-year period of non-residence

(1) An employee meets the requirement of this section for a tax year if the employee was:

(a) non-UK resident for the previous 3 tax years, or

(b) UK resident for the previous tax year but non-UK resident for the 3 tax years before that, or

(c) UK resident for the previous 2 tax years but non-UK resident for the 3 tax years before that, or

(d) non-UK resident for the previous tax year, UK resident for the tax year before that and non-UK resident for the 3 tax years before that.

(2) The residence status of the employee before the 3 years of non-UK residence is not relevant for these purposes.