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SARS not likely to score against World Cup players UCT PhD thesis points out gaps in Taxman's game plan

The excitement of the 2010 FIFA World Cup is not just in the stadiums and fan parks; it's also in the bookkeeping. UCT PhD student Craig West focused his thesis – "The taxation effects for foreign international sportspersons" – on foreign athletes playing in South Africa and their staff. Included in his scope were the legislative provisions applicable to the 2010 FIFA World Cup.

Withholding tax on athletes is the domestic tax legislation applied to foreign athletes performing in South Africa. It is a flat rate of 15% on gross earnings (that is, they cannot claim any deductions for tax purposes). An article particular to sportspersons appears in most of South Africa's double tax treaties. These treaties are negotiated contracts between nations dividing up taxing rights where the resident of one state works or earns income from the other state (the source state).

Essentially, the sportspersons performing in South Africa are to be taxed here. Included in the term "sportsperson" for the purposes of the FIFA concessionary legislation are the coaches, doctors, physiotherapists and similar staff accompanying the team. However, the double-tax treaty interpretation of the term "sportsperson" specifically excludes such peripheral persons and focuses only on the player (noting that this can differ between tax treaties). This means that while the government may have intended to tax such peripheral persons, it cannot do so in terms of some of the double-tax treaties.

In addition, the concessionary FIFA legislation removed the responsibility to withhold the tax on amounts paid to the sportspersons from the Participating National Associations. This means that the sportspersons are expected to contact SARS themselves, obtain the necessary returns and pay 15% of their World Cup earnings to SARS. This is clearly impractical and could not have been intended.

It is up to National Treasury and SARS to consider these findings.

Some of the treaty articles provide that both countries may tax the athlete, but that the residence state must then exempt the income earned in the source state, or provide a credit for the taxes paid in the source state. These methods do not always produce the correct result, and the article of the double-tax treaty can be interpreted differently between the states, resulting in double taxation.

In addition, South Africa does not have double-tax treaties with 11 of the 31 foreign countries performing in the World Cup. This may mean that the player is taxed both in South Africa and in his or her home country.

The thesis demonstrates the inherent inequity between the taxation of sportspersons compared to other mobile workers, as contained in South Africa's double-tax treaties. Particular to the FIFA World Cup, Dr West shows that while the foreign national teams' management remains free of taxation in South Africa during the 2010 FIFA World Cup, the players remain taxable on their performance fees.

Additionally, while misalignment between a domestic tax and the taxing rights granted to the source state in a double-tax treaty are expected, the wording of the double-tax treaty seems to have merely been adopted from the Organisation for Economic Co-operation and Development tax treaty model, without consideration for the impact on South African domestic tax laws. The double-tax treaty narrows the application of the domestic law by overriding its effects.

Dr West completed his academic traineeship in UCT's Department of Accounting more than 10 years ago. In 2002 he joined the tax section of the university's Department of Accounting as a staff member. He registered for his PhD in 2007 and graduated in 2009.

Copies of the thesis have been sent to the National Treasury and SARS, with no response.

ENDS

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