

Are Signing Bonuses Bad for Canada's Sports Franchises?

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Toronto has a rich history in professional sports. The Maple Leafs are an Original Six franchise with the second-most Stanley Cups of any team. The Blue Jays won back-to-back World Series Championships in 1992-1993 and have become contenders again in the best division in baseball. The Raptors won its first NBA Championship in 2019. However, it is well known that high-profile free agents often pass on chances to play in Toronto: Steven Stamkos passed up a chance to play for his favourite childhood team; Kawhi Leonard left after one championship season; and Shohei Ohtani used the Blue Jays as a stalking horse. What is it about Toronto that keeps talented athletes away? Maybe it's the cold weather. It could be the national media pressure. However, it seems that there is a new reason for athletes to stay away – the Canada Revenue Agency (the “CRA”).

On 1 July 2018, the Toronto Maple Leafs signed now-captain John Tavares (“**Tavares**”) to a 7-year contract worth USD \$77 million. Tavares had played the previous 9 seasons with the New York Islanders and was still living in New York at the time he signed with the Leafs. As part of his compensation, Tavares received a signing bonus of USD \$15.25 million on 1 July 2018. Maple Leafs Sports and Entertainment (“**MLSE**”) withheld 15% of the signing bonus amount and remitted it to the CRA in accordance with Article XVI of the *Convention Between Canada and the United States of America* (the “**Treaty**”), and Tavares paid taxes on the signing bonus in the US, as he was a US Person at the time the signing bonus was paid. However, the CRA issued a Notice of Reassessment to Tavares, denying him relief under the Treaty, and assessing Tavares for approximately \$8 million in additional tax and interest charges. Tavares has filed an appeal of the reassessment.

Article XVI of the Treaty states that where an amount is paid by a Canadian Resident (in this case, MLSE) to a US resident (Tavares) as an inducement to sign an agreement relating to the performance of the services of an athlete, and such amounts are not considered salaries, wages or other similar remuneration in respect of employment under Article XV of the Treaty, the maximum tax rate on the gross amount of such payment is 15%. Tavares argues that the signing bonus received on 1 July 2018, was an inducement to sign with the Leafs over the other teams bidding for his services. Further, Tavares claims that the signing bonus did not form part of his salary, wages or other similar remuneration as “the signing bonus was payable to Tavares regardless of whether: the Toronto Maple Leafs played him or transferred him to another team, games were cancelled due to a labour dispute, he was injured (other than injury from non-permitted personal activity), or he was sent down to the minor leagues. The Contract separately entitled Tavares to remuneration for services amounting to an annual salary payable semi-monthly.”

Time will tell whether Tavares' appeal will be successful or not. However, in the meantime, Tavares' reassessment serves as another warning sign to discourage athletes from signing as a free agent in Toronto – or any other Canadian professional sports franchise.

At least there is a silver lining in all of this – there is no salary cap on good legal advice.

If you have any questions about the above information, please contact a member of Gardiner Robert LLP's experienced Tax and Estates Planning Group.

(This blog is provided for educational purposes only, and does not necessarily reflect the views of Gardiner Roberts LLP).

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