

Know your rights

Article in 'Running Rugby' in March 2008

The appointment of the new England football coach, and also the new Chelsea coach, for a short time at least generated headlines concerning the question of tax and promotional services which are usually called image rights. I saw one report that suggested that football coaches do not have an image. Personally I do not agree with that, everyone has an image, but some are worth a lot more than others. These two apparently had conventional employment packages with no image right agreements. In rugby however, both union and league, image right contracts with players are pretty common. Even a player who is not, or is no longer a national celebrity could have value to a local rugby club in helping to promote interest and attendance at rugby matches and other events. Players such as Chris Sheasby, Waisale Serevi and Bobby Skinstead are examples of players that have been used by their rugby clubs; clubs that were outside the National leagues, but the name and image of these particular players were still very effective in raising revenue, to boost income and support, not only for their own clubs but also at away matches for the opposition.

Basically, the image rights of a 'personality' are a valuable intangible asset that can be exploited by commercial organisations, generally rugby clubs, but also other commercial organisations such as rugby equipment suppliers. The constituent parts of a rugby players' image may include the name, a nickname, image, photo, voice, persona or some other distinctive feature such as hairstyle, or even lack of hair.

The most common situation in rugby is to split a player's image rights from his emoluments for playing rugby under his contract of employment, because the image right exploitation is not deemed to be employment income, thereby saving tax and National insurance for both the player and club. This is usually done by a player assigning or licensing his "Image Rights" to a separate entity, usually a personal service company, and that entity contracting with the player's club. For a non domiciled player the image right company would usually be outside the UK. However the tax rules for the non-domiciled are in the throws of being changed and it will depend upon the amount of income generated whether it will be worthwhile. Such players should take immediate advice. The image right income is earned on a regular basis by the company but the player does not necessarily draw the same amount at the same time, and often the company will employ someone than or in other in addition to the player or not necessarily be owned 100% by the player all of which provides a valuable tax planning opportunity.

At the higher end of the spectrum where the amounts in question can be quite significant it is important to make certain that your paperwork is correct. A few years ago I saw the "image right" paperwork of one Guinness Premiership club that were quite vulnerable to an Inland Revenue attack. The crucial point is that the image right which is usually assigned to a separate company is not in any way geared to employment duties as a rugby player or to his performance on the pitch or elsewhere or as an employee as such. The quantum of the respective amounts has to be proportionate. Payments for the image rights will not be subject to NI and it is fairly common for the image right company to be involved in other activities, property development being a common one. In an interview in one of the broadsheets with an England player he answered questions about his life both on and off the field, and property development by his "image right" company was one of them. Other internationals and less well-known players have made similar arrangements and companies which started with relatively modest income streams are now trading significantly in their own right many years after the player has hung up his boots.

Another aspect on the player's side of rugby club management is the subject of pensions Up until 2006, one of the benefits of being a professional sportsman was having a preferential age for taking retirement benefits from pension schemes. Professional rugby players could retire at 35 and start taking their private pensions immediately if they wanted to. When new legislation came into force on 6 April 2006, the rules changed. HM Revenue & Customs no longer recognise any occupations for separate treatment so benefits can only be taken now between 55 and 75, unless the scheme member is 50 by 2010 in which case benefits can be taken then, I do not suppose any professional players currently playing will come into this category.

All is not lost though. For players who had plans in place before the new rules came into effect with a lower pension age, those terms can still be honoured. For any new plans set up now, the new terms will apply.

Pension contributions should still be considered as part of a well structured retirement plan despite the changes. There are valuable tax benefits and it is now possible to invest whichever is the greater of £3,600 or 100% of salary into a pension fund, subject to an overall maximum of £225,000 in 2007/08. This is far more generous than the previous limits with higher rate tax relief still available on the payments for qualifying individuals. The employer can also make contributions into the member's scheme and this can often be extremely beneficial as part of a "salary sacrifice" arrangement, with consequent reduction in national insurance costs.

Pension schemes in the UK are now far more flexible than they once were in terms of benefits and how the money can be invested. There are tremendous opportunities to be taken with the correct advice.

Combining the various payments that may be made to players; salaries, image rights and pensions should be reviewed to make certain that both players and your club have the best arrangements. As ever what works for one player might not work for another and it is imperative to take advice.

