

Image Rights

What are they?

Under UK law, “Image Rights” are a bundle of assets; they are not acknowledged as an asset in their own right. This is not necessarily the position under other legal systems. Sportsmen, entertainers, or other people who work in the media will often receive payment for the use of their “image” by their employers or other organisations, which provides a separate income stream to that which arises from their “day job”. Questions are often asked about how these Image Rights can be exploited in the most efficient manner; both from a commercial and tax point of view.

How is the exploitation of Image Rights taxed?

In very general terms, a payment for using a person’s image would be regarded as income and taxed accordingly. UK HMRC will look very carefully at any structure set up to exploit or protect an individual’s Image Rights and particular attention needs to be paid to the UK anti-avoidance legislation. Since the assets which make up an individual’s Image Rights have a value; if they are disposed of, a capital gain could arise which could be taxable.

How can Image Rights be transferred?

In a jurisdiction where image rights are recognised in their own right, there is a defined asset which can be transferred. If the Image Rights can be registered, it is even easier. This is not quite so easy under UK law, although certain parts of the Image Rights bundle are clearly transferrable (a registered trade mark for example), generally someone paying a fee to exploit the Image Rights will want to pay for the whole package.

Under UK law, an element of the Image Rights includes “goodwill”. The goodwill of a business is an asset which can be transferred, but UK HMRC’s view is that if there is no underlying business activity, then the goodwill is personal and cannot be transferred. In this respect, registration of an individual’s Image Rights in a jurisdiction such as Guernsey, which allows it, can help to define an asset which is capable of transfer. It is also useful to demonstrate prior commercial activity in relation to the Image Rights to demonstrate there is a business.

Once it has been established that the Image Rights can be transferred to a separate vehicle, the question arises as to what sort of vehicle. For UK based individuals, this would usually be a UK company. An overseas entertainer or sportsman could consider a non-UK company, which could have tax advantages (see below).

In either case, use of a company, aside from any tax advantages, provides a vehicle to enter into licensing agreements and other commercial arrangements.

If the individual is particularly successful, it ultimately provides a vehicle to employ staff and advisers.

How are they valued?

Valuation will depend on a number of factors but, primarily, will relate to known and potential future cash flows. Expert valuation advice will be needed.

Overseas issues

If an entertainer or sportsman is from the UK and still living in the UK, then the income generated from the Image Rights can be expected to be taxed in the UK, whether personally in the hands of the individual or via an Image Rights holding vehicle. However, if the entertainer or sportsman is merely resident, but not domiciled in the UK, it may be possible to segregate the exploitation of the individual's Image Rights between different territories. Rights for different regions could be held in different vehicles. The best example of this would be an international footballer who plays for a club in the UK. In its simplest form, the exploitation of rights relating to his club could be regarded as UK rights; whereas those relating to his country could be classed as 'Rest of World Rights' and dealt with differently. (There would obviously be certain nuances that needed to be dealt with; country marketing in the UK for example and, conversely, club and related sponsorship deals involving publicity outside the UK.)

In an ideal world, an overseas entertainer or sportsman would transfer the Image Rights before becoming UK resident. That is not always possible so if the individual has already become UK resident, registration of the Image Rights outside the UK (in Guernsey for example) can provide evidence that the "asset" is not a UK asset to alleviate the tax consequences of a transfer.

It should be noted that the tax position of a UK resident, but non-domiciled individual is extremely complex. However, if the individual claims the Remittance Basis of Taxation (for which there is a charge, ranging from the loss of UK personal allowance (for the first seven years of UK residence) up to £90,000 once the individual has been UK resident for seventeen years), he will pay UK Income Tax on all UK source income (regardless of the vehicle which earns it), but would not be taxable on non-UK source income unless it was brought into or used in the UK.

Guernsey Image Rights legislation

Advice in Guernsey would be needed in relation to the ability to register an individual's Image Rights in Guernsey. However, the process is relatively straightforward and is a cost effective way of providing an extra layer of protection to an individual's Image Rights. Registration can help to provide evidence of a defined asset, which has been recorded in a public record.

Conclusion

Entertainers and sportsmen can reap significant rewards from the exploitation of their Image Rights. Whilst under UK law Image Rights are simply a collection of various different rights, registering them as a defined bundle under a law such as Guernsey can help to provide clarity, both in commercial and in tax terms.

For further information or to discuss any of the issues raised in this briefing note, please contact a member of the Rooks Rider Solicitors' team:



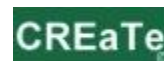
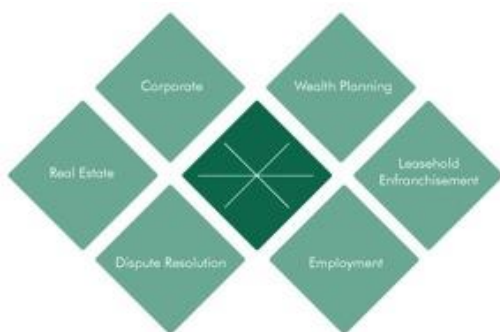
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