

February, 2025 No.5

Taxation of Sponsorship Agreements with Professional Athletes

Tsutomu Endo

1. Introduction

There are a variety of corporate marketing strategies that a company may follow, one of which is to conclude a sponsorship agreement with an athlete in order to improve the recognition and image of its brand and products. A typical recent example would be the case of ITO EN, LTD., which concluded a global ambassador agreement with Shohei Ohtani of the Los Angeles Dodgers, resulting in increased sales volume and brand recognition. Because high sponsorship fees are often paid to athletes in sponsorship agreements, it is important to accurately understand the tax implications of such agreements and to draft appropriate agreements. In this newsletter, we will explain the tax implications when a company enters into a sponsorship agreement with an athlete and pays sponsorship fees.

2. What sponsorship agreements are¹

While the term “sponsorship agreement” can include a variety of specifics, sports sponsorship can be defined as “a transaction in which a sponsor acquires the right to associate itself with the activities and events of a sports-related individual or organization and commercially exploit such association to enhance its own brand, product recognition, image, etc. and provides money, goods or services in exchange for such rights.” As the contracting parties, the sponsor is generally a company that hopes to advertise its brands or products, and the other party (i.e., the rights holder) may be an athlete (a legal entity such as a management company or an asset management company may also be a party), a club team, a sports league, etc. In addition, the rights acquired by the sponsor through the sponsorship agreement may include rights to make athletes wear a uniform, etc. bearing the sponsor’s logo, portrait and name usage rights, appearances in advertisements and various other rights. The other contents of a sponsorship agreement are also usually unique and vary from case to case.

The taxation of the sponsorship fees to be paid by the sponsor under a sponsorship agreement depends on many factors such as whether the contracting party is an individual or a corporation, a resident (domestic corporation) or a nonresident (foreign corporation) and the content of the sponsorship agreement (in particular, for what rights or services the sponsorship fees are to be paid). Therefore, to prepare a sponsorship agreement, it is imperative to examine the provisions of the agreement from the perspective of the potential impacts on taxation.

3. Taxation of sponsorship agreements

(1) General remarks

As mentioned above, sponsorship agreements can have various contents, and it is necessary to analyze the tax consequences of a sponsorship agreement according to its contents. In the following, we will explain the taxation of sponsorship agreements assuming that a Japanese company will enter into a sponsorship agreement with a professional athlete who belongs to a club team in a foreign professional league and is a non-resident of Japan not having an office etc. in Japan. The following explanation will cover the taxation of the right to (1) make the athlete wear uniforms, etc. bearing the sponsor’s logo mark; (2) use portrait rights, publicity rights, etc.; and (3) make the athlete appear in its advertisements. It should be noted that an actual sponsorship agreement

¹ The descriptions in this chapter mainly rely on Shiro Kato, “Basic Knowledge And Contract Practices Of Sports Sponsorship” (Chuokeizai-sha, 2023) (hereinafter “Kato Bibliography”). This book provides a detailed explanation of the fundamentals of sports sponsorships, legal relationships and contractual practices.

often provides for more than one of the rights in (1) through (3) above, and in such cases, it is necessary to consider for what rights or services the sponsorship fees are to be paid. If there is a lack of clarity on this point that makes the tax consequences unclear, the sponsorship agreement may have to separately stipulate the amount of the sponsorship fees to be paid for each right or service to be provided by the athlete.

(2) Right to make the athlete wear uniforms, etc. bearing the sponsor's logo

(i) Income tax

If the sponsor pays the sponsorship fees to a non-resident athlete in exchange for the athlete's obligation to wear a uniform bearing the sponsor's logo or to use products (shoes or equipment, etc.) manufactured by the sponsor in competitions, the sponsorship fees would be subject to income tax in Japan if they fall under the category of domestic source income as enumerated in each item of Article 161(1) of the Income Tax Act. If the athlete wears a uniform, etc. bearing the sponsor's logo and receives the sponsorship fees, the sponsorship fees would be considered to be remuneration for rendering personal services under Article 161(1)(xii)(a) of the Income Tax Act. The remuneration for rendering personal services is taxable if the athlete performs such services in Japan. As such, if the athlete competes only overseas, he/she would not be subject to income tax in Japan since such athlete would not be considered to be providing personal services in Japan. On the other hand, if the athlete competes not only overseas but also in Japan and the sponsorship fees include remuneration for competitions in Japan, that portion would be considered to be domestic source income. Therefore, the sponsor paying the sponsorship fees would be required to withhold income tax at the rate of 20.42% (Article 161(1)(xii)(a), Article 212(1) and Article 213(1)(i) of the Income Tax Act).

Depending on the country in which the athlete resides, a tax treaty may apply. However, since a tax treaty basically allows the source country (i.e., the country where the athlete performs activities) to tax the income that the athlete earns from his or her activities², the tax treaty would not exempt or reduce the athlete's income tax in Japan.

The portion of the sponsorship fees paid by the sponsor that correspond to the competitions in Japan should be calculated using a reasonable percentage based on the contents of the agreement. However, if the agreement stipulates various services to be provided by the athlete, there would be many difficulties in the calculation thereof. In such cases, the parties to the agreement may agree in advance to determine the amount of the sponsorship fees for each service to be provided by the athlete and stipulate them in the agreement.

(ii) Corporate tax

Generally, the sponsorship fees that companies pay are considered to be advertising expenses, and therefore, the company paying the sponsorship fees can treat such sponsorship fees as a deductible expense in their corporate income tax returns.

(iii) Consumption tax

When considering whether the sponsorship fees to be paid to a non-resident athlete would be subject to Japanese consumption tax, the main issues would be whether the services to be provided by the athlete would be regarded as domestic transactions (taxable) or foreign transactions (nontaxable). Since where the provision of services took place would be determined based on whether or not they were provided in Japan (Article 4(3)(ii) of the Consumption Tax Act), if the athlete participates only in competitions held abroad, the provision of services would be treated as a foreign transaction and consumption tax would not be imposed. On the other hand, if the athlete participates in competitions not only abroad but also in Japan, the provision of services would be regarded as being performed both in and outside Japan, and where the provision of services took place would be determined based on the "location of the office, etc. of the person providing the services" (Article 6(2)(vi) of the Order for the Enforcement of the Consumption Tax Act; see also 5-7-15 of the Consumption Tax Act Basic Circular for practical guidance). In this case, since the athlete would not have an office, etc. in Japan, the "location of the office, etc. of the person providing the services" would be considered to be outside Japan, and therefore, the provision of

² For example, Article 16(1) of the US-Japan tax treaty. However, said paragraph provides that the athlete would be exempt from taxation if the amount of the gross receipts derived by the athlete does not exceed USD 10,000 for the taxable year concerned. Paragraph 9 of the Commentary on Article 17 of the OECD Model Tax Convention explains that, if an athlete wears a uniform with a sponsor's logo during a competition, the athlete would fall under the scope of said provision.

services related to the sponsorship fees would be considered to be an entirely foreign transaction, and consumption tax would not be imposed.³ The fact that consumption tax would not be imposed means that the athlete would not have to file a consumption tax return and pay consumption tax, but the sponsor who paid the sponsorship fees would not be allowed to deduct any amount as a purchase tax credit from the consumption tax to be paid to the government in its consumption tax return.

(3) Use of portrait rights, publicity rights, etc.

(i) Income tax

A sponsor can use images, photographs, names, etc. of athletes in advertisements, etc., and in exchange therefor, the sponsor is to pay sponsorship fees to the athletes. Although there is no explicit statute, portrait and publicity rights are judicially recognized⁴ and do not fall under copyright. Therefore, they do not fall under the category of royalties for a “copyright (including print rights, neighboring rights and any equivalent rights)” under Article 161(1)(xi)(b) of the Income Tax Act and other domestic source income enumerated in Article 161(1) of the Act. As such, income tax would not be imposed on the sponsorship fees in Japan.

(ii) Corporate tax

Generally, sponsorship fees are considered to be advertising expenses for companies, and therefore, the company paying the sponsorship fees can treat such sponsorship fees as a deductible expense in their corporate income tax returns.

(iii) Consumption tax

It must be examined whether a provision of portrait rights, etc. by an athlete to a sponsor constitutes domestic transactions. Since a provision of portrait rights, etc. is considered to be a lease of assets⁵, whether or not it constitutes a domestic transaction would be determined based on the location of the office, etc. of the person who is leasing the assets (Article 6(1)(x) of the Order for the Enforcement of the Consumption Tax Act). In this case, since the athlete does not have an office, etc. in Japan, the provision of portrait rights, etc. would be considered to be a foreign transaction, and therefore, consumption tax would not be imposed.

(4) Advertising Appearances

(i) Income tax

A sponsor pays an athlete sponsorship fees in exchange for an athlete’s appearance in advertisements. The appearance of the athlete in the advertisements would be considered to fall under the provision of personal services under Article 161(1)(xii)(a) of the Income Tax Act, and therefore, if the provision of services takes place in Japan, it would be considered to be domestic source income. As such, if the filming of an advertisement featuring the athlete takes place in Japan, the sponsorship fees would be considered to be domestic source income. In such case, the sponsor paying the sponsorship fees would be obligated to withhold income tax at the rate of 20.42% (Article 161(1)(xii)(a), Article 212(1) and Article 213(1)(i) of the Income Tax Act).

As mentioned in (2)(i) above, depending on the country in which the athlete resides, a tax treaty may be applicable. However, since a tax treaty basically allows the source country (i.e., the country where the athlete performs the activities) to tax the income earned from the athletes’ activities, the athlete’s income tax in Japan would not be reduced or exempted by the tax treaty. With respect to “income derived by an individual who is a resident of a Contracting State as an entertainer ... or as a sportsman, from his personal activities as such exercised in the other Contracting State,” it is unclear how the wording thereof would apply to the appearance of the athlete in the advertisement. In this regard, while appearing in the advertisement would not constitute the activities of an athlete or a sportsman, the provision in question should be interpreted to apply to the athlete because the athlete can be considered to be an “entertainer” in relation to said advertisement appearance.⁶

³ The decision issued by the Tokyo District Court on October 13, 2010 was for a case related to the sponsorship fees for a car race. In this case, the court ruled that the office, etc. involved in the provision of the services was a domestic office, and therefore, the transaction was a domestic transaction and subject to consumption tax.

⁴ Kato Bibliography, p. 73.

⁵ Yutaka Karigome, “Tax Accountant Practices Q&A Second Opinion No. 29 Consumption Tax: Determination of Domestic and Foreign Transaction Sponsorship Fees Related to Professional Athletes,” Zeimu-Tsushin No. 3790, p. 21.

⁶ Paragraph 9.1 of the Commentary on Article 17 of the OECD Model Tax Convention states that “[t]he reference to an ‘entertainer’

In addition, in some cases, the athlete may receive compensation for broadcasting the advertisement in which he or she appears (i.e., compensation for broadcasting rights, etc. as copyright neighboring rights) under a sponsorship agreement. If such compensation is received together with the fees for the appearance in the advertisement, they should be treated as fees for the provision of personal services rather than royalties (Income Tax Basic Circular 161-22⁷).

(ii) Corporate tax

Generally, sponsorship fees are considered to be advertising expenses for companies, and therefore, the company paying the sponsorship fees can treat such sponsorship fees as a deductible expense in their corporate income tax returns.

(iii) Consumption tax

It must be examined whether the provision of services (i.e., appearing in an advertisement) took place in Japan (taxable as a domestic transaction) or abroad (not taxable as a foreign transaction) (Article 6(2)(vi) of the Order for the Enforcement of the Consumption Tax Act). If the advertisement was filmed in Japan, the provision of services would be considered to be a domestic transaction and subject to consumption tax.⁸ The athlete's appearance in the advertisement would be considered to be a "provision of specific services" (Article 2(1)(viii)-5 of the Consumption Tax Act and Article 2(2) of the Order for the Enforcement of the Consumption Tax Act), and consumption tax would be imposed due to the application of the reverse charge mechanism. Therefore, the athlete would not be obligated to file a consumption tax return and pay consumption tax, but the sponsor would be obligated to file a tax return and pay the consumption tax, and such amount paid can be deducted as a purchase tax credit (Articles 5(1), 28(2), 30(1) and 45(1)(i) of the Consumption Tax Act).⁹ On the other hand, if the filming of the advertisement took place abroad, the provision of services would fall under foreign transactions as the services were performed outside of Japan and would not be subject to consumption tax.

4. **Considerations for drafting sponsorship agreements**

As mentioned above, since the income tax (withholding tax) and consumption tax consequences could vary greatly depending on the contents of the sponsorship agreement, it is necessary to accurately analyze the tax implications and reflect them in the agreement. With regard to withholding tax, it is necessary to consider whether to include in the agreement provisions related to withholding, or, at the outset, gross-up provisions (see Income Tax Basic Circular 181-223 Kyo-4). With regard to consumption tax, it is necessary to clearly indicate whether or not the agreed sponsorship fees include the amount of consumption tax if the fees are subject to consumption tax in Japan. In addition, if the services or rights provided by the athlete include those that are subject to tax and those that are not, one option may be to classify the sponsorship fees according to the services or rights in order to clarify the tax consequences.

5. **Conclusion**

Since the taxation of a sponsorship agreement can vary depending on the parties to and the contents of the agreement, it is necessary to accurately understand the tax implications and to draft an appropriate agreement that is in line with such understanding. We hope this newsletter will be of some help in this regard.

February 14, 2025

or sportsman' includes anyone who acts as such, even for a single event." Based on this commentary, athletes should also be considered to be "entertainers" in relation to advertising appearances. In this regard, although it is related to consumption tax, the same interpretation is also given on page 35 of the "Q&A on Taxation of Consumption Tax on Cross-border Provision of Services (May 2015) (revised July 2024)" published by the National Tax Agency (<https://www.nta.go.jp/publication/pamph/pdf/cross-QA.pdf>; hereinafter referred to as the "NTA Q&A").

⁷ Although this circular directly applies to income related to business for the provision of personal services under Article 161(1)(vi), it should also be considered to apply to fees for the provision of personal services under Article 161(1)(xii)(a) (see also Morito Yanagisawa (ed.), "2024 Edition: Q&A Withholding Income Tax Practices" (Seibun-sha, 2024), p. 754).

⁸ NTA Q&A, p. 35.

⁹ However, if the taxable sales ratio for that taxable period is 95% or more, the sponsor would not be obligated to file a tax return and pay consumption tax due to the application of the reverse charge mechanism (Articles 42 and 44(2) of the Supplementary Provisions of the 2015 Amendment Act).

[Author]

**Tsutomu Endo** (Nagashima Ohno & Tsunematsu Partner)

tsutomu_endo@noandt.com

Tsutomu Endo is a partner at Nagashima Ohno & Tsunematsu. Mr. Endo engages in many tax advice and planning matters related to a variety of transactions such as international transactions and corporate restructuring transactions, and, also represents taxpayers in many tax dispute cases including transfer pricing cases and cross-border business restructuring cases. With respect to sports taxation, Mr. Endo advises professional athletes, companies and sports leagues and organizations, as well as making a presentation regarding tax issues of foreign professional athletes in Sports Business Subcommittee of Research Commission for the Establishment of a Sports Oriented Nation of the Liberal Democratic Party, the Japanese ruling party.

Tsutomu Endo received B.A. from the University of Tokyo in 2006, Juris Doctor from the University of Tokyo in 2009, Master of Corporate Law (MCL) from the University of Cambridge in 2016, and LL.M. in International Tax Law from Vienna University of Economics and Business (Wirtschaftsuniversität Wien) in 2017.

This newsletter is given as general information for reference purposes only and therefore does not constitute our firm's legal advice. Any opinion stated in this newsletter is a personal view of the author(s) and not our firm's official view. For any specific matter or legal issue, please do not rely on this newsletter but make sure to consult a legal adviser. We would be delighted to answer your questions, if any.

NAGASHIMA OHNO & TSUNEMATSU

www.noandt.com

JP Tower, 2-7-2 Marunouchi, Chiyoda-ku, Tokyo 100-7036, Japan
 Tel: +81-3-6889-7000 (general) Fax: +81-3-6889-8000 (general) Email: info@noandt.com



Nagashima Ohno & Tsunematsu, based in Tokyo, Japan, is widely recognized as a leading law firm and one of the foremost providers of international and commercial legal services. The firm's overseas network includes locations in New York, Singapore, Bangkok, Ho Chi Minh City, Hanoi, Jakarta* and Shanghai. The firm also maintains collaborative relationships with prominent local law firms. The approximately 600 lawyers of the firm, including about 50 experienced lawyers from various jurisdictions outside Japan, work together in customized teams to provide clients with the expertise and experience specifically required for each client matter. (*Associate office)

If you would like to receive future editions of the NO&T Tax Law Update by email directly to your Inbox, please fill out our newsletter subscription form at the following link: https://www.noandt.com/en/newsletters/nl_tax/.

Should you have any questions about this newsletter, please contact us at [<nl-tax@noandt.com>](mailto:nl-tax@noandt.com).

Please note that other information related to our firm may be also sent to the email address provided by you when subscribing to the NO&T Tax Law Update.