

## GOLFER RETIEF GOOSEN SCORES A BOGIE IN TAX COURT

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Golfer Retief Goosen, a nondomiciliary UK resident, entered into endorsement agreements with various corporate sponsors, and other agreements to provide services for those sponsors. The IRS challenged Goosen's characterization of payments under those agreements, raising issues of personal services income, royalty income, source of income, and taxation under the U.S. – U.K. income tax treaty.

These issues arise often for athletes and international artists. Many of the characterization issues are factual and difficult to apply. The Tax Court ultimately disagreed with several of Goosen's positions and increased his U.S. income taxes.

Given the variety of arrangements that Goosen entered into, the Tax Court's discussion and conclusions should be helpful in assisting other athletes and artists in both structuring their arrangements and determining the proper U.S. income tax consequences. The following provides a brief summary of the what and why of the various arrangements. Taxpayers and advisors with these issues would be well served to review the opinion and conclusions.

**Item:** Prize money from U.S. golf tournaments and appearance fees in the U.S.

**Character:** Effectively connected income from a U.S. trade or business.

**Item:** Off-course endorsement agreement payments (that is, the ability of the sponsor to use Retief's name and likeness in advertising and product promotions).

**Character:** Royalty income, per Retief's ownership interests in his name and likeness. As to royalty income relating to golf card and video game sales, these were sourced in the U.S. based on the percentage portion of U.S. sales of those items to worldwide sales. Allocating by the relative amount of advertising conducted for such

items inside and outside the U.S. by the sponsors was rejected by the court. Royalty payments attributable to on-course and other endorsement agreements were treated as 50% U.S. source based only on a general analysis of various markets of the sponsors.

**Item:** On-course endorsement fees and bonuses, relating in large part to wear or use sponsor products while playing golf.

**Character:** Personal services income, which are sourced by where the services are performed. However, some of the contracts combined such on-course use of products with the ability of the sponsor to use Retief's name and likeness. Such contract payments were thus considered to be partly personal services income and party income from royalties, with the court being forced to make some type of guestimate allocation between the two.

**Item:** U.S. source royalty income from endorsements – effectively connected with a U.S. trade or business?

**Character:** As to on-course endorsements, which were tied to and required Retief to play in golf tournaments, Retief's participation was material to his receiving such income and is treated as income effectively connected with a U.S. trade or business. As to off-course endorsements, these were not dependent on tournament play or Retief's presence in the U.S. These were thus determined to be non-effectively connected income, subject to 30% tax as FDAP income.

**Item:** Applicability of U.S.-U.K. tax treaty.

**Character:** The opinion noted that the treaty will apply to income for a U.K. nondomiciliary resident only to the extent the income is remitted to or received in the U.K. Retief's endorsement income was initially paid into Liechtenstein bank accounts of entities controlled by Retief's manager. Amounts were ultimately transferred to a U.K. bank account, but often in the form of salary and other payments. While the Tax Court acknowledged funds being paid to the U.K. bank account, Retief could not provide enough proof that such payments were endorsement income. Thus, Retief was denied

the use of the treaty, which might otherwise have provided reduced U.S. income taxation on Retief's U.S. source income.

Because the various contracts often mixed on-course use of sponsor products, with ability to use name and likeness for advertising and promotion, the court had a difficult time allocating such combined items. Taxpayers seeking more certainty in this area should consider allocating a fixed portion of the compensation to the various items being paid for.

*Retief Goosen v. Commissioner*, 136 T.C. No. 27 (June 9, 2011)

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