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AN AMERICAN FOOTBALL TEAM IN LONDON: HOW TAX CONSEQUENCES FOR INTERNATIONAL ATHLETICS COULD AFFECT THE SUCCESS OF A POTENTIAL NFL FRANCHISE IN LONDON

Brett Smith*

I. INTRODUCTION

In January 2016, the National Football League (“NFL”) owners voted to allow the St. Louis Rams franchise to relocate its base of operations to Los Angeles.¹ The franchise had long positioned itself for a move back to L.A., which it left for St. Louis in 1995.² But the Rams organization also considered other locales for relocation, in case moving to L.A. did not work out, including London, England.³

At first, the possibility of a British team playing “American Football” seemed unlikely. After all, European “Football” – what we

* J.D., University of Missouri School of Law, 2016.

¹ Ken Belson, *Rams Moving to Los Angeles Area, and Chargers Could Join Them*, N.Y. TIMES (Jan. 12, 2016), <http://www.nytimes.com/2016/01/13/sports/football/rams-moving-to-los-angeles-area-and-chargers-could-join-later.html>.

² *Id.*

³ AOL, *Report: St. Louis Rams could move to Denver, London*, AOL (Nov. 29, 2015, 12:19 PM), <http://www.aol.com/article/2015/11/29/report-st-louis-rams-could-move-to-denver-london/21274543>.

Yanks call “soccer” – reigns in Europe. Among the four major professional sports leagues operating in the United States, the NFL is currently the only league without an international presence.⁴ But the NFL has eyed international expansion and the untapped potential of the European market for some time. The financial success of European soccer franchises demonstrates the upside – three of the most valuable sports teams in the world are European soccer franchises.⁵ The league’s first major attempt to tap into the European market came with the advent of NFL Europa, which began as the World League of American Football in 1991.⁶ Initially, the World League consisted of ten teams competing in the United States and Europe.⁷ The World League later reconfigured and

⁴ The National Hockey League (“NHL”) since its inception has been a composite of American and Canadian teams. The NHL currently fields teams from Ottawa (Senators), Montreal (Canadiens), Toronto (Maple Leafs), Calgary (Flames), Winnipeg (Jets), Edmonton (Oilers), and Vancouver (Canucks). Major League Baseball (“MLB”) at one point fielded two teams from Canada, as did the National Basketball Association (“NBA”). Now, each has one, both in Toronto – the Blue Jays (MLB) and the Raptors (NBA).

⁵ Kurt Badenhausen, *The World’s 50 Most Valuable Sports Teams*, FORBES (July 15, 2015, 9:00 AM), <http://www.forbes.com/sites/kurtbadenhausen/2015/07/15/the-worlds-50-most-valuable-sports-teams-2015/#7070d9e57fd0>. This includes No. 1 Real Madrid (Spain), No. 4 Barcelona (Spain), and No. 5 Manchester United (England). *Id.*

⁶ NFL, *NFL Europa Closes*, NFL (last updated July 26, 2012), <http://www.nfl.com/news/story/09000d5d801308ec/article/nfl-europa-closes>.

⁷ *Id.*

eliminated the U.S. teams, leaving six European teams.⁸ London had a team from 1991 to 1998.⁹ By 2005, five of the six teams were in Germany.¹⁰

The NFL shut down NFL Europa in 2007 to “re-focus the NFL’s strategy on initiatives with global impact.”¹¹ In that same year, the NFL played its first game in London.¹² The NFL’s expansion plan no longer involved putting, what amounted to, a subsidiary minor league in Europe. The NFL began thinking bigger than that. It wanted its major league brand to go global and that plan would begin with a British Invasion.

A major factor in the success of an NFL team in London will be the league’s ability to convince players to join the plan. NFL Players Association (“NFLPA”) spokesman George Atallah, the Assistant Executive Director of External Affairs, has said that the Players Association will have something to say about expanding to the London

⁸ *Id.*

⁹ Macgille, *WORLD LEAGUE OF AMERICAN FOOTBALL LONDON MONARCHS*, <http://www.worldleagueofamericanfootball.com/id86.html> (last visited June 19, 2017).

¹⁰ NFL, *supra* note 6.

¹¹ *Id.*

¹² Albert Breer, *London Team by 2022? NFL Continues to Forge Forward in U.K.*, NFL (Oct. 2, 2015), <http://www.nfl.com/news/story/0ap3000000547487/article/london-team-by-20>.

market.¹³ One of the biggest issues the NFL players will face is an increase in tax liability – not only will the U.S. tax an NFL player’s salary, but so will the United Kingdom.¹⁴ International players could reduce this double tax via the U.S. tax code’s foreign income exclusion, foreign tax credit, or foreign tax deduction. However, the players could not completely eliminate this extra tax liability, which could prevent the NFL London franchise from signing the players that it needs.

II. TAX CONSEQUENCES FOR SALARIES

A. *ROOKIES*

On April 28, 2016, the Los Angeles Rams selected University of California quarterback Jared Goff with the first overall pick of the NFL Draft.¹⁵ The Rams had not made a first-round draft selection as a Los Angeles-based franchise since choosing Auburn tackle Wayne Gandy in

¹³ Kristi Dosh, *NFL in London Raises Legal Issues*, ESPN (Sept. 24, 2013), http://espn.go.com/nfl/story/_/id/9716479/nfl-team-london-raises-legal-issues.

¹⁴ This article will focus solely on the effects of income tax considerations on the NFL player’s decision to play in the U.K. A myriad of other reasons could impact the athlete’s decision, including visa and labor law issues. See Kristi Dosh, *Four Hurdles on the Way to Adding An NFL Team in London*, FORBES (Oct. 26, 2015, 11:31 AM), <http://www.forbes.com/sites/kristidosh/2015/10/26/four-hurdles-on-the-way-to-adding-an-nfl-team-in-london/#48d3ad107ae5>.

¹⁵ Gregg Rosenthal, *L.A. Rams Select Jared Goff with top Pick of NFL Draft*, NFL (Apr. 28, 2016), <http://www.nfl.com/news/story/Oap3000000656763/article/la-rams-select-jared-goff-with-top-pick-of-nfl-draft>.

1994. The No. 1 draft pick that year, Ohio State defensive lineman Dan Wilkinson, signed a rookie contract worth \$14.4 million over six years, including a then-record \$5 million signing bonus.¹⁶ Professional athletes draw much more income today. As the top pick in 2016, Goff is projected to command \$27,946,656 over the course of his rookie contract, including an \$18,515,839 signing bonus.¹⁷ Of course, he will never pocket the full amount. Goff will have to pay the Taxman.¹⁸

The U.S. has one of the lowest tax rates in the world for individuals at a maximum of 39.6%.¹⁹ Thus, \$11,066,875.78 of Goff's \$27,946,656 salary will be devoted to federal tax.²⁰ If that sounds bad,

¹⁶ Bill Plaschke, *Wilkinson Gets Biggest Bonus, \$14.4-Million Deal*, L.A. TIMES (May 6, 1994), http://articles.latimes.com/1994-05-06/sports/sp-54601_1_dan-wilkinson.

¹⁷ Jason Belzer, *2016 NFL Draft 1st Round Rookie Salary Projections*, FORBES (Apr. 29, 2016), <http://www.forbes.com/sites/jasonbelzer/2016/04/29/2016-nfl-draft-1st-round-rookie-salary-projections/#788aac4a7036>.

¹⁸ The Beatles' George Harrison knows a little something about the burdens of paying tax in the United Kingdom. Harrison wrote the song "Taxman" after the Beatles started making money and he discovered most of it went to the Crown. GEORGE HARRISON, I, ME, MINE 94 (Genesis Publications 1980).

¹⁹ An American athlete could also be subject to state and local income taxes as well as Medicare and Social Security taxes. This article focuses solely on the U.S. federal income tax.

²⁰ Both the U.S. and the U.K. have graduated tax rates. The maximum rate in the U.S. kicks in at \$415,050. U.S. DEPARTMENT OF THE TREASURY, Publication 505: Tax Withholding and Estimated Tax (2016), <https://www.irs.gov/publications/p505/ch02.html>. The maximum rate in the U.K. kicks in at 150,001 British pounds, or \$217,115.2237. THE UNITED KINGDOM INCOME TAX RATES AND ALLOWANCES, <https://www.gov.uk/government/publications/rates-and-allowances-income-tax/income-tax-rates-and-allowances-current-and-past#tax-rates-and-bands> (last

imagine if the Rams had moved to London. The U.S. taxes its citizens and residents on their worldwide income,²¹ so any money an American football player makes in London would be taxable by the U.S. The U.K. would also tax Goff's salary.²² The U.K.'s highest individual tax rate is 45%.²³ So Goff would also owe an extra \$12,575,995.20 to the U.K. If Goff did nothing to mitigate this tax liability via the foreign income exclusion, foreign tax credit, or foreign tax deduction,²⁴ he would be left with only \$4,303,785.02 of his original salary – and after just paying federal taxes. The No. 13 pick of the 2016 draft will likely make an estimated \$12.4 million.²⁵ If that player does not have to worry about paying income tax to the U.K., he will take home \$7.82 million after taxes. Therefore, being drafted No. 13 overall by an American team would be much more beneficial than being drafted No. 1 by a London team.

visited June 19, 2017). The league-required minimum NFL salaries are higher than both of those numbers.

²¹ I.R.C. § 61(a).

²² THE UNITED KINGDOM INCOME TAX, <https://www.gov.uk/income-tax>.

²³ *Id.*

²⁴ *See infra* Section VI.

²⁵ Belzer, *supra* note 17.

Every rookie would feel the pinch of this double taxation, from the top pick to the last man chosen.²⁶ The NFL has structured rookie contracts to mandate four-year minimum base salaries for the players drafted in the latter rounds of the draft.²⁷ In his first year, the player's minimum salary is \$450,000. In the second year it rises to \$525,000. And the salary increases to \$600,000 in Year 3 and \$675,000 in Year 4.²⁸ The tax consequences for an American player making the minimum salary in London during those years would like this:²⁹

	Salary	U.S. Income Tax	U.K. Income Tax	Net
Year 1	\$450,000	\$178,200	\$202,500	\$69,300
Year 2	\$525,000	\$207,900	\$236,250	\$80,850
Year 3	\$600,000	\$237,600	\$270,000	\$92,400
Year 4	\$675,000	\$267,300	\$303,750	\$103,950

The U.S. and a number of other countries, including the United Kingdom, have agreed to tax treaties to prevent such double taxation.³⁰

²⁶ The last pick of the NFL Draft, which consists of seven rounds, is colloquially known as "Mr. Irrelevant."

²⁷ Belzer, *supra* note 17.

²⁸ *Id.*

²⁹ These are the tax consequences for a player who did not mitigate his tax liability. See *infra* Section VI.

³⁰ See Convention Between the Government of the United States of America and the Government of the United Kingdom of Great Britain and Northern Ireland for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income and on Capital Gains, U.S.-U.K., July 24, 2001 (herein "Convention for

Like statutes, tax treaties are considered the supreme law of the land.³¹ According to the U.S.-U.K. treaty, income derived by a U.S. resident³² as an entertainer in the U.K. may be taxed by the U.K., except where the amount derived by that resident does not exceed \$20,000, or its equivalent in pounds, for the taxable year.³³ A “sportsman” is considered an entertainer by the tax treaty,³⁴ and the minimum NFL player salary is \$450,000. Therefore, the tax treaty does not protect the NFL player from double taxation of his income.

A drafted player has limited ability to choose the team he is drafted into, and he must move where the team needs him, which could include London. If the player wants to play in the NFL, he must accept the London team’s offer and move overseas. The rules of the NFL Draft, as provided by the NFL and NFLPA’s Collective Bargaining Agreement, do not give rookies an option of selecting where they want to play.³⁵ But it is not

the Avoidance of Double Taxation”).

³¹ U.S. CONST. art. VI § 1.

³² For the purposes of the treaty a U.S. citizen is considered a U.S. resident. Convention for the Avoidance of Double Taxation, *supra* note 58, at 7.

³³ *Id.* at 18.

³⁴ *Id.*

³⁵ COLLECTIVE BARGAINING AGREEMENT, NFL & NFLPA (Aug. 4, 2011), https://nflpaweb.blob.core.windows.net/media/Default/PDFs/General/2011_Final_CBA_Searchable_Bookmarked.pdf.

unprecedented for a runaway top draft pick³⁶ to leverage himself out of playing for the team that drafted him and owns his rights.

In 1983, the Indianapolis Colts drafted Hall of Fame quarterback John Elway No. 1 overall.³⁷ But Elway and his father wanted nothing to do with Colts coach Frank Kush or team owner Robert Irsay.³⁸ Elway made it publicly known that he would not play for the Colts, and the team ended up trading him to the Denver Broncos.³⁹ New York Giants quarterback Eli Manning made a similar move in 2004.⁴⁰ The San Diego Chargers drafted the quarterback No. 1 overall despite warnings from Manning and his father that Eli would refuse to play for the Chargers.⁴¹ The Chargers then traded Manning to the Giants.⁴² If London housed an expansion as opposed to a relocated team, there is a strong chance that the franchise could have the No. 1 pick in the team's inaugural year. If a top

³⁶ *E.g.*, a player who is virtually certain to be the No. 1 overall of that year's draft.

³⁷ Mike Klis, *John Elway has Star Role in ESPN Documentary about 1983 NFL Draft*, DENVER POST (Apr. 8, 2013), http://www.denverpost.com/broncos/ci_23048939/john-elway-has-star-role-espn-documentary-about.

³⁸ *Id.*

³⁹ *Id.*

⁴⁰ Ryan Wilson, *Eli Manning Calls his Draft-Day Experience 'Stressful,' 'Confusing'*, CBS SPORTS (Apr. 27, 2015), <http://www.cbssports.com/nfl/eye-on-football/25165037/eli-manning-calls-his-draft-day-experience-stressful-confusing>.

⁴¹ *Id.*

⁴² *Id.*

player does not like the extra taxes on his salary, he might attempt a strategy like Elway or Manning did.

Of course, this strategy does not work for every draftee. Power-brokering your way out of town is a move reserved for elite players. However, every player has the right to not sign with the team that drafted him by holding out. This forces the team to either trade the player or simply hold onto his rights as the player's career remains in limbo. If the team chooses limbo, the player either will have to relent and go somewhere he does not want to play or sit out for the entire year.

B. *FREE AGENTS*

Whether a team relocates or the NFL puts an expansion team in London, many players will suddenly find themselves playing professionally overseas. If the NFL decides to put an expansion team in London, there will likely be an expansion draft. The Houston Texans are the NFL's most recent expansion team, and they built their squad via the expansion draft in 2002.⁴³ The NFL required each of the existing teams to declare five players draft eligible, and the Texans chose 30 of those

⁴³ Bill Barnwell, *The 2016 Expansion Draft: Building a 33rd NFL Team From Scratch*, ESPN (Mar. 4, 2016), http://espn.go.com/nfl/story/_/id/14892319/building-new-nfl-team-expansion-draft-nfl.

players for the core of its team.⁴⁴ The NFL also expanded in 1995 with two teams – the Carolina Panthers and the Jacksonville Jaguars.⁴⁵ The draft rules were essentially the same, except the two teams alternated picks.⁴⁶

If the NFL conducts another expansion draft, the London team will absorb the draftees' current contracts from their previous teams. The 30 draftees then will have to pay U.K. income taxes in addition to what they are already paying. Suddenly, the player will be making less money on the same contract. The problem could be magnified in relocation. Subjecting an entire team – and only that team – to reduced pay seems patently unfair. There is no chance that the NFLPA will let such a unilateral change to an existing contract happen without a fight.

III. TAX CONSEQUENCES FOR ENDORSEMENT INCOME

Athletes can also make a substantial amount of income in endorsements. Both the U.S. and the U.K. tax athletes on their global

⁴⁴ *Id.*

⁴⁵ CAROLINA PANTHERS, <http://prod.www.panthers.clubs.nfl.com/team/history/expansion-draft.html> (last visited June 19, 2017).

⁴⁶ *Id.*

endorsement income at the same rates as employment income.⁴⁷ To determine the amount of endorsement income subject to U.K. tax, divide the number of days the athlete spent training and competing in the U.K. during the year by the total number of days he spent training and competing around the world.⁴⁸ Then, multiply that percentage by the athlete's total endorsement income from all countries and any other country.⁴⁹ This is the amount of the athlete's endorsement income that is subject to taxation in the U.K.

The U.K.'s endorsement tax has already been levied on NFL players who have traveled with their teams to London to play a game.⁵⁰ The teams usually spend less than a week in the U.K., especially if there is not a bye week before the game, but the amount taxed is not insufficient.⁵¹ In 2016, the Rams played the New York Giants at Twickenham Stadium in London. Suppose a Rams player made \$1,000,000 in endorsements during the 2016 football season. Today's professional athletes train on a daily basis; but everyone needs time off. The following calculation

⁴⁷ NFL, *supra* note 6.

⁴⁸ *Id.*

⁴⁹ *Id.*

⁵⁰ Dosh, *supra* note 13.

⁵¹ *Id.*

assumes the Rams player took one day off per week and trained for 313 days total during the year.⁵² If the Rams spend 6 days in the U.K. training and competing, the percentage of days trained would equal 1.92%. Applying that to the endorsements, the U.K. would tax \$19,200 of the player's income. Assuming that amount is taxed at 45%, the Rams player would owe the U.K. \$8,640 in taxes on his endorsements. Relatively speaking, \$8,640 does not amount to a lot for a pro football player, but it is substantial. That amount would add to the \$396,000 the Rams player would have to pay in U.S. taxes on the same endorsement income.

The amount a player paid in taxes on endorsements will increase dramatically if the Rams moved to London. Instead of playing just one game per year, the Rams would play eight games in London. Taking a conservative approach, suppose the team only trains during the weeks with home games and spend just 56 days in the U.K., and the Rams player still trains for 313 days per year; that equals 17.89%. For the player who makes \$1,000,000 in endorsements, \$178,900 will be taxed in the U.K. at 45% that equals \$80,505 in U.K. tax. This would be added to the \$396,000 of U.S. tax, leaving the player with \$523,495 of his endorsement money.

⁵² Taking 365 days in a non-Leap Year minus 1 day off per 52 weeks.

That same Rams player, with the team currently in L.A., would take home \$604,000.

A more liberal view of the days spent in London results in a far greater amount of U.K. tax. Suppose that the team has eight regular-season home games and two preseason home games and spends each of those weeks in London for a total of 70 days. Additionally, suppose the team requires the players to train in London during the offseason for 60 days.⁵³ If a Rams player spends 313 days per year training, the percentage would be 41.53%. So \$415,3000 of the player's \$1,000,000 would be taxed in the U.K., at a rate of 45% for a tax of \$186,885. These numbers would increase even more if the team made the playoffs, especially if it had home field advantage in any of the games.

IV. RELIEF FROM FOREIGN INCOME TAX LIABILITY

A. *FOREIGN INCOME EXCLUSION*

One way NFL players can mitigate this extra tax liability is via Section 911 of the Code. A qualified individual can elect to exclude his or

⁵³ Note that extra training in London might itself deter a player from signing with a London team.

her foreign earned income from tax in the U.S.⁵⁴ A qualified individual who is a U.S. citizen must have a “tax home” in a foreign country.⁵⁵ A person has a tax home in a foreign country if the individual’s home in that country is for the pursuit of a trade or business.⁵⁶ An individual does not have a tax home in a foreign country for any period that he or she has an abode within the U.S.⁵⁷ Players will likely split time between a home in the U.S. and a home in the U.K. But neither temporary presence in U.S. or the maintenance of a dwelling in the U.S. necessarily means the individual’s abode is in the U.S. during that time.⁵⁸

Every player on the NFL London team will likely have a tax home in England. If that is the case, to qualify for the exclusion the player also must either be a bona fide resident of the U.K. for at least one full taxable year or he must spend at least 330 full days outside of the U.S. during a 12-month period.⁵⁹ According to *Schoneberger v. Commissioner*, an individual actually present in a foreign country who is not a mere transient

⁵⁴ I.R.C. § 911(a).

⁵⁵ § 911(d)(1).

⁵⁶ §§ 162(b)(2), 911(d)(3).

⁵⁷ § 911(d)(3).

⁵⁸ Treas. Reg. § 1.911-2(b).

⁵⁹ I.R.C. § 911(d)(1).

or sojourner is a bona fide resident of that or those countries.⁶⁰ If the U.S. citizen goes to a foreign country for a definite purpose and intends to leave, then he or she is considered a transient.⁶¹ If the player cannot meet the bona fide resident requirement, he must be in the U.K. or somewhere else outside the U.S. for 330 days. The player must be outside of the U.S. for the entire day to count toward the 330 days.⁶² So travel days to away games and for visits home do not count. This would make it difficult for a player to meet the 330-day test. The London franchise would play eight regular-season games and two preseason games in the U.S. At the least, the team would need a day for travel before and after each game day, leaving players with only five or six days to spare before they failed the 330-day test. Further, it is more likely for away games that the London team will spend even more time in the U.S. to prevent jet lag from affecting its performance.

⁶⁰ *Schoneberger v. Comm’r*, 74 T.C. 1016 (1980).

⁶¹ Courts have established a list of factors to decide if you are a transient or not, including: intent, participation in the foreign country’s activities on a social and cultural level, general assimilation into the country, assumption of burdens of paying taxes in the foreign country, marital status and the residence of your family, and the nature and duration of your employment.

⁶² I.R.C. § 911(d)(1).

A U.S. citizen or resident can exclude up to \$101,300 of foreign earned income for tax year 2016.⁶³ Foreign earned income includes salaries, wages, and bonuses.⁶⁴ This amount could be significant for the player who makes the league minimum or close to it. For a first-year rookie making the league minimum of \$450,000, this significantly reduces the player's tax liability. The tax consequences for a rookie on the league minimum, four-year based contract looks like this:

	Salary	Taxable Amount*	U.S. Tax*	U.K. Tax	Net
Year 1	\$450,000	\$348,700	\$138,085.20	\$202,500	\$109,414.80
Year 2	\$525,000	\$423,700	\$167,785.20	\$236,250	\$120,964.80
Year 3	\$600,000	\$498,700	\$197,485.20	\$270,000	\$132,514.80
Year 4	\$675,000	\$573,700	\$227,185.20	\$303,750	\$144,064.80

*After subtracting the \$101,300 foreign income exclusion from gross income

⁶³ § 911 (b)(2)(D)(i); Rev. Proc. 2015-53, 2015-44 I.R.B. 615.

⁶⁴ § 911(d)(2)(A). Bonuses are often a part of a player's compensation package.

The following table compares net incomes for this player with and without the foreign earned income exclusion:

	Year 1	Year 2	Year 3	Year 4
With exclusion	\$109,414.80	\$120,964.80	\$132,514.80	\$144,064.80
Without	\$69,300	\$80,850	\$92,400	\$103,950

However, it would be less significant for the upper echelon athletes who likely will play a larger role in the London team's success. Using the maximum foreign income exclusion saves the NFL player in London \$40,114.80 in tax liability. The average salary for an NFL player is around \$2 million.⁶⁵ Taking the exclusion would give the average player a U.S. tax liability of \$751,885.20 as compared to \$792,000 without it, which is only 2% of the average player's salary. The player making the league minimum saves 8.9%. The exclusion helps an NFL player making \$450,000 much more than it does a player making \$2 million, for whom it is much easier to absorb the tax liability.

The NFL's top paid player between June 2014 and June 2015 was Pittsburgh Steelers quarterback Ben Roethlisberger, who made a total of

⁶⁵ Kurt Badenhausen, *Average MLB Player Salary Nearly Double NFL's, But Still Trails NBA's*, FORBES (Jan. 23, 2015), <http://www.forbes.com/sites/kurtbadenhausen/2015/01/23/average-mlb-salary-nearly-double-nfls-but-trails-nba-players/#6182b4b9269e>.

\$48.85 million in that timeframe.⁶⁶ That amount included \$2.5 million from endorsements, a \$31 million signing bonus, a \$3.25 million roster bonus, and \$12.1 million in 2014 base salary.⁶⁷ Suppose Roethlisberger, a U.S. citizen, played for the hypothetical London Werewolves rather than the Pittsburgh Steelers. Further, suppose he made the same amount as he did between June 2014 and June 2015, and he lived in the U.K. for the entire year minus 13 weeks spent traveling to away games: eight regular season, three preseason, and two postseason games. Roethlisberger would have spent 274 days in the U.K., or approximately 75% of the year. Applying this percentage to Roethlisberger's endorsement income reduces his taxable income in the U.K. to \$1.88 million, and his total taxable income in the U.K. to \$48.23 million. Taxed at 45% Roethlisberger would owe \$21.7 million in tax to the U.K.

Excluding \$101,300 from his worldwide income, Roethlisberger would be taxed in the U.S. on \$48,748,700 of his income at a rate of 39.6%, which equals a U.S. tax bill of \$19,304,485.20. Without the foreign income exclusion, Roethlisberger would owe \$19,344,600 in

⁶⁶ *Id.* The NFL is a fiscal year taxpayer.

⁶⁷ *Id.*

taxes. Roethlisberger would only save 0.2% in taxes by using the exclusion. Further, he would owe to the U.K. \$21.7 million in income tax, which would leave Roethlisberger with only \$7.85 million of his league-high salary. The foreign tax exclusion, while helpful to some, does not provide the best option around the double taxation issue at play here. A better additional option in mitigating foreign tax liability for Roethlisberger and other athletes is the foreign tax credit.

B. *FOREIGN TAX CREDIT*

Under Section 901 of the Code, a taxpayer is eligible for a tax credit for income taxes paid or accrued during the taxable year to any foreign country.⁶⁸ To qualify, the tax's predominant character must be that of an income tax in the U.S. sense.⁶⁹ The credit is a dollar-for-dollar reduction of tax that could potentially wipe out the U.S. tax liability. Indeed, foreign tax credits that you cannot use can be carried back one year and forward ten years, subject to the limitation in those years.⁷⁰ Because the U.K. income tax rate exceeds the U.S. income tax rate, an NFL player on the London team would basically use the foreign tax credit

⁶⁸ I.R.C. § 901(b)(1).

⁶⁹ Treas. Reg. § 1.901-2(a)(1)(ii).

⁷⁰ I.R.C. § 904(c).

to only pay the U.K. tax. This can amount to a huge tax savings for a player. Take Roethlisberger's league-high salary of \$48.85 million, for example. If the quarterback played in London, he would be relieved of about \$19.3 million in tax liability to the U.S. That is the equivalent of the salaries of about 43 rookies earning the league-designated minimum.

The credit is limited to the amount of the U.S. tax imposed on the income.⁷¹ NFL players would not be relieved of their tax liability on the extra 5.4% that the U.K. charges on income tax. So while the foreign tax credit greatly relieves much of the extra tax liability that an NFL player would face, he would still pay more in taxes than any other player on an American-based team. For example:

	Salary	Tax if Playing for U.S. team	Tax if Playing for U.K. team	Extra Tax Playing in U.K.
Rookie making the league minimum	\$450,000	\$178,200	\$202,500	\$24,300
Average NFL player salary	\$2,000,000	\$792,000	\$900,000	\$108,000
Jared Goff, 2016 No. 1 Draft Pick	\$18,515,839 ⁷²	\$7,332,272.24	\$8,332,127.55	\$999,855.31

⁷¹ § 904(a).

⁷² Signing bonus only.

Ben Roethlisberger 2014-2015	\$48,850,000	\$19,344,600	\$21,982,500	\$2,637,900
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Those amounts could be enough to dissuade a player from signing with a London team. But the calculations are even more complex and detrimental than that. The foreign tax credit is allowed only up to the amount of the income that is U.S.-sourced.⁷³ Wages and salaries for personal services are sourced according to the place where the individual performed the services that produced the income.⁷⁴ A player on an NFL London team would perform those services partly in the U.S. and partly in the U.K. In that case, the source of the compensation generally is determined on a time basis – basically how much time does the athlete spend in each locale earning his money.⁷⁵ To simplify these calculations, suppose that a London player spends half his time in the U.S. practicing for and playing away games and the other half in London practicing for and playing home games.⁷⁶ This limits the American player in London to

⁷³ *Id.*

⁷⁴ § 861(a)(3).

⁷⁵ Treas. Reg. § 1.861-4(b)(2)(ii)(a).

⁷⁶ This presumption likely would be skewed in a tax year where the London team made the playoffs, depending on whether the team earned a home game or had to play on the road in the postseason. The calculations for the foreign tax credit also then would be adjusted accordingly.

applying only 50% of the foreign tax credit to U.K. taxes. Thus, the player pays 50% of the U.S. taxes and 100% of the U.K. taxes. Here are the results:

	Salary	Tax if Playing for U.S. team	Tax if playing for U.K. team	Extra Tax Playing in U.K.
Rookie making the league minimum	\$450,000	\$178,200	\$291,600	\$113,400
Average NFL player salary	\$2,000,000	\$792,000	\$1,296,000	\$504,000
Jared Goff, 2016 No. 1 Draft Pick	\$18,515,839 ⁷⁸	\$7,332,272.2 ⁴	\$11,998,263.6 ⁷	\$4,665,991.4 ³
Ben Roethlisberger 2014-2015	\$48,850,000	\$19,344,600	\$31,654,800	\$12,310,200

You cannot use Section 911 and the foreign tax credit for the same amount. Any taxes paid on income that is excluded under Section 911 are not creditable.⁷⁹ So if the player qualifies for both the exclusion and the credit, he can apply any amount over the \$101,300 exclusion limit to the foreign tax credit calculations.

⁷⁷ See Prop. Reg. § 1.861-4(2)(ii)(G). Although it is assumed here that practice time for U.S. games will take place in the U.S., proposed regulations would source income for athletes according to where the event where the athlete performs takes place, even if the athlete practiced for the event in a different country.

⁷⁸ Signing bonus only.

⁷⁹ I.R.C. § 911(d)(6).

C. FOREIGN TAX DEDUCTIONS

A player could also deduct any foreign taxes paid from his taxable U.S. income.⁸⁰ There are no special requirements to take the foreign tax deduction outside of earning foreign income. You would never take the foreign tax deduction unless you could not receive the foreign tax credit. Here are the tax consequences if NFL players in London use the foreign tax deduction rather than the foreign tax credit:

	Salary	U.K. Tax	U.S. Taxable Income	U.S. Tax	Total Tax Liability
Rookie making the league minimum	\$450,000	\$202,500	\$247,000	\$98,010	\$300,510
Average NFL player salary	\$2,000,000	\$900,000	\$1,100,000	\$435,600	\$1,335,600
Jared Goff, 2016 No. 1 Draft Pick	\$18,515,839*	\$8,332,127.55	\$10,183,711.45	\$4,032,749.73	\$12,364,877.28
Ben Roethlisberger 2014-2015	\$48,850,000	\$21,982,500	\$26,867,500	\$10,639,530	\$32,622,030

*Signing bonus only

⁸⁰ § 164(a)(1).

D. *POTENTIAL TAX REFORM*

Officials in the NFL and the U.K. are well aware of these income tax issues as they not only affect the players, but other team personnel, the team as a business organization, and the NFL as a whole. British Parliament has discussed legislation that would allow exemptions for an NFL team and its players,⁸¹ and there has been a general public push in the U.K. to create these exemptions.⁸² In October 2015, British Treasury Department Chancellor George Osborne lent his support to the cause, saying that he would work to remove any barriers that might stop the NFL from placing a team in London.⁸³ So tax reform that favors the NFL and its players is not out of the question. It would not be the first time that the U.K. Treasury granted a tax exemption to non-resident athletes competing within its borders.⁸⁴

⁸¹ Dosh, *supra* note 13.

⁸² *Id.*

⁸³ Dosh, *supra* note 14. Osborne implied that he would rather have a team relocate to London rather than field an expansion team, saying: "I am supporting the NFL to bring one of their 32 teams to London permanently and will work with them to make this happen." *Id.*

⁸⁴ The 2012 London Olympics, the 2011 and 2013 Champions League finals, 2013 Olympic Anniversary Games, and the 2014 Commonwealth Games have been granted exceptions in recent years. Dosh, *supra* note 13.

V. CONCLUSION

Although the NFL has not announced any definite plans to place a team in London, it has taken significant steps in that direction. By 2022, it could be a reality. As the laws in the U.S. and U.K. currently stand, NFL athletes playing for a team in London would face more income taxes than if they played for a U.S.-based team. The extra tax liability the players would face in the U.K. could prevent players from signing with the London team. If the London franchise struggles to field talent, it will struggle on the field as well. Without reform in the tax law, an NFL team in London could be doomed from the start.