

Tampa Bay Rays of Montréal: Home Field Advantage in Two Countries

Conor M. Bowers*

ABSTRACT

In the United States, professional sports are a large part of our social culture. As fans, we develop attachments to our teams, and sometimes our passion borders on obsession. Part of the sporting life that fans regularly live with is the effect of players changing teams from year to year—an entire team moving to a new city, however, is much rarer. When a team does move, it has the potential to break the hearts of all the fans who support it, yet very rarely do we consider the effect moving teams has on the individual players themselves. Their lives and families are grounded in a specific city for a large portion of the year; when the team moves, they have to uproot all of that. In this Note, I will analyze a Major League Baseball team's unprecedented proposal, the effects this decision would have on the team as a business, and the possible repercussions for its players.

I. INTRODUCTION

Over the last few years, the Tampa Bay Rays have proposed several plans for a new or renovated stadium in Saint Petersburg, Florida. They proposed renovations to their current stadium, Tropicana Field, and asked the city of Tampa about building a new stadium downtown that would be more accessible to fans than their current stadium in Saint Petersburg. Unfortunately, after several proposals and tireless negotiations between the city of Saint Petersburg and the Rays organization, the organization grew tired of waiting for the city to make a decision that would benefit both parties.

To counter the strategic inaction used by Saint Petersburg to keep the Rays playing in their home stadium, the team began exploring the possibility of splitting their season between two locations. Under this plan, the Rays would spend the spring in Tampa Bay and relocate to the city of Montréal, Québec, Canada, for the summer months. A partial

* J.D. Candidate, 2021, Syracuse University College of Law. The author would like to thank his friends and family for support during the Note process, Professor Nassau for his guidance, and his former teammates who continue to play the game while he gets to write about the law it involves.

relocation has never occurred before in the League and is further complicated by the two locations being in separate countries. No North American professional sports team has ever had two home stadiums in separate countries; the move would be an unchartered first. Major League Baseball (MLB) has given the team permission to begin exploring a partial relocation to Montréal. Although the team paused the plan to focus on the upcoming season, the front office left open the possibility that the team will explore a partial relocation of the franchise.

Montréal was formerly the home of the Montréal Expos, from 1969 until 2004.¹ While in Montréal, however, the Expos were never a great success. Their on-field product failed to make it deep into the postseason, and their business leadership eventually doomed the team. In 2005, the MLB became the team's owner, relocated them to Washington, D.C., and renamed them the Washington Nationals.²

Recently, however, there has been a strong call amongst fans in the Montréal area and across Canada for a Major League team to return to Montréal. As the second most populated city in Canada, and given its history with the MLB, it is both feasible and understandable that Montréal would be the first option for an expansion. Yet the question here is not about Montréal's suitability as a baseball town, but rather the idea behind and potential consequences of splitting a team between two cities in two different countries.

A partial relocation for the Rays is a relatively new idea. The Rays' management proposed it in late June 2019 to get the team a more supportive fan base. Although they have been a playoff contender, the Rays have a tremendously low attendance number, and attendance is a significant revenue driver for any MLB team. Inability to attract a home crowd has made it hard for the organization's business side to continue to put a winning team on the field.

The purpose of this Note is to legally assess the feasibility of the Rays' proposed business operation. I will explore how the Rays could move their team for half of a season and how this would affect their business. I will then look at how this would change the business's expenses, how it would affect the players and business from a tax perspective, and finally, the legal path to navigating operations in two countries. There has never been a team in the MLB that has split time between two "permanent" homes. Further complicating this matter, the

1. *Montreal Expos Team History*, SPORTS TEAM HIST. (n.d.), available at <https://sportsteamhistory.com/montreal-expos> (last visited Apr. 1, 2021) [hereinafter *Montreal Expos*].

2. *Id.*

locations are in two different countries. In this Note, I will also examine how strategy affects the players, how international law affects the organization as a whole, and the role it plays in this transition. All mentions to currency throughout this Note will be in U.S. dollars. I believe significant legal and business issues fundamental to the plan will doom the team from executing this ambitious move, which will prohibit the Rays from successfully carrying out the proposed transition.

II. THE TAMPA BAY RAYS

The Tampa Bay Rays' first year in operation was the 1998 MLB season, and since this time, they have been based in Saint Petersburg, Florida.³ Saint Petersburg is a city of 265,000 people and is located about thirty minutes away from Tampa.⁴ In 1995, the MLB owners voted to expand the League to thirty teams by adding the Tampa Bay Devil Rays and the Arizona Diamondbacks as expansion teams; with this decision, the team was formed.⁵ Players drafted from other teams in the League during an expansion draft constitute an expansion team.⁶ During an expansion draft, other teams can keep additional players with each passing round.⁷ Because of this protection, current MLB teams do not lose their best players, instead often losing players they did not plan on keeping long-term.⁸

Expansion teams do not typically perform well because a group of unwanted players from the first few seasons fill their rosters, but as time passes the teams adjust and create their own identities. Despite this adjustment period, however, the Arizona Diamondbacks won the World Series four years after its creation in 2001,⁹ and the Rays were the 2008 runners-up.¹⁰ The Rays also competed in the postseason several times,

3. *Franchise Timeline*, MLB (n.d.), available at <https://www.mlb.com/rays/history/timeline> (last visited Apr. 2, 2021) [hereinafter MLB].

4. *St. Petersburg, Florida Population 2020*, WORLD POPULATION REV. (n.d.), available at <http://worldpopulationreview.com/us-cities/st-petersburg-population/> (last visited Apr. 2, 2021).

5. MLB, *supra* note 3.

6. *Expansion Draft Rules*, NOWHITTING (n.d.), available at https://www.nowhitting.com/index.php?option=com_content&view=article&id=530&catid=28&Itemid=40 (last visited Apr. 2, 2021).

7. *Id.*

8. *Id.*

9. Adam Augustyn, *Arizona Diamondbacks*, BRITANNICA (Oct. 3, 2018), available at <https://www.britannica.com/topic/Arizona-Diamondbacks> (last visited Apr. 2, 2021).

10. MLB, *supra* note 3.

won their division twice, and in 1994 had the best record in the American League.¹¹

The team has played all of its home games at Tropicana Field, the only domed stadium in the MLB, since the team's inception.¹² The original funding for the stadium came from public financing; the public added 79% of all funding for subsequent renovations and the Rays financed the remaining 21% themselves.¹³ The stadium opened in 1990 at a total cost of \$138 million, with the goal of attracting an MLB team.¹⁴ In 1996, the field received an \$85 million facelift in order to look more like a traditional ballpark.¹⁵ The \$85 million investment "included wider concourses, installation of AstroTurf, clubhouses, dugouts," escalators, and offices for front-office personnel.¹⁶ The team itself has also invested around \$37 million in capital improvements to the stadium.¹⁷

Despite these investments, the Rays' stadium is amongst the worst in the MLB for various reasons, including the playing surface and the dome itself, which lacks amenities for fans.¹⁸ After the 2018 season, *Forbes* magazine valued the stadium at \$114 million, which is well beneath the total amount invested to date.¹⁹ *Forbes* also ranked the Rays as the twenty-ninth highest-valued franchise in the MLB.²⁰ Compared to the rest of their division, the American League East (AL East), this valuation makes them the lowest revenue team.

A significant portion of the team's revenue is from attendance, with some estimates as high as 70%.²¹ During the 2019 season, the Rays

11. *Id.*

12. *Tropicana Field*, BALLPARKS OF BASEBALL (n.d.), available at <https://www.ballparksofbaseball.com/ballparks/tropicana-field/> (last visited Apr. 2, 2021) [hereinafter *Tropicana Field*].

13. *Id.*

14. *Tropicana Field History*, MLB (n.d.), available at <https://www.mlb.com/rays/ballpark/information/tropicana-field-history> (last visited Apr. 2, 2021).

15. *Id.*

16. *Tropicana Field*, *supra* note 12.

17. *Id.*

18. Maury Brown, *Ranking All 30 of MLB's Ballparks: Best to Worst*, FORBES (Mar. 19, 2018), available at <https://www.forbes.com/sites/maurybrown/2018/03/19/ranking-all-30-of-mlbs-ballparks-first-to-worst/#60a4a5f76be4> (last visited Apr. 2, 2021).

19. *Tampa Bay Rays*, FORBES (Apr. 2020), available at <https://www.forbes.com/teams/tampa-bay-rays/#44fb9835d12b> (last visited Apr. 2, 2021).

20. *Id.*

21. John Romano, *If We're Going to Complain About Rays Attendance, at Least Get the Story Right*, TAMPA BAY TIMES (May 3, 2019), available at <https://www.tampabay.com/sports/rays/2019/05/03/if-were-going-to-complain-about-rays-attendance-at-least-get-the-story-right/> (last visited Apr. 2, 2021).

averaged 14,552 fans per game;²² this was second-to-last in the League.²³ On the contrary, the Yankees averaged attendance of 40,795, which was third in the MLB, and the Red Sox averaged 36,107 fans per game, which was seventh.²⁴ The disparity in home attendance creates revenue differences that hurt the team when it comes to having a higher payroll for players, whether that is done by extending offers to organizationally-grown players (players drafted or signed internationally) or acquiring high-priced free agents. Such disparate home attendance makes it extremely difficult for the Rays to generate the revenue that would allow them to better compete with the AL East's established powers.

As a team, the Rays are a consistent contender within the AL East. Even in this traditionally difficult division, they reached the playoffs in 2008, 2010, 2011, 2013, and 2019.²⁵ In the 2010 season, the team had the best record in the American League.²⁶ In the AL East, they compete against the New York Yankees and the Boston Red Sox, two large-market teams that can outspend the Rays annually, in part due to attendance, the size of the fanbase, and branding.²⁷ In 2019, the Tampa Bay Rays spent \$53.5 million on player salaries.²⁸ This salary size ranked thirtieth out of thirty teams in the MLB.²⁹ By comparison, the Yankees spent \$205.4 million on player salaries, making them the second-highest spending team in the League; the Red Sox, having spent \$204.3 million, were fourth.³⁰ In a league where payroll often determines a team's success, it was a testament to the Rays' front-office philosophy that, in a division where they were both intra-division rivals outspent them by nearly \$150 million, they made the playoffs as a wild-card team.

These figures tell us that it is hard for the Rays to create the same on-field product as teams like the Yankees or Red Sox. They have less money on hand to bring in high-priced free agents that put good teams "over the hump," which transforms them into World Series contenders.

22. *2019 MLB Attendance and Team Age*, BASEBALL REFERENCE (n.d.), available at <https://www.baseball-reference.com/leagues/MLB/2019-misc.shtml> (last visited Apr. 2, 2021).

23. *Id.*

24. *Id.*

25. *Tampa Bay Rays Season Results*, ESPN (n.d.), available at http://www.espn.com/mlb/history/teams/_/team/TB (last visited Apr. 2, 2020).

26. *Id.*

27. *Top Team Payrolls*, USA TODAY (2019), available at <https://www.usatoday.com/sports/mlb/salaries/2019/team/all/> (last visited Apr. 2, 2021).

28. *Id.*

29. *Id.*

30. *Id.*

Instead, the Rays must rely on picking well in the MLB draft, signing lesser-known international prospects, and redoubling focus on player development, simply to have a shot at competing. These financial realities are important support for the argument against moving the Rays to Montréal. Although they already struggle to earn and spend money on players, a move to Montréal would increase the team's overall tax burden, steepening their uphill battle to land better players with even less money.

With the large differences in average attendance and payroll, the Rays are at a tremendous competitive disadvantage against two of the teams they compete against around twenty times per year. Being unable to bring in the same caliber players, they must instead rely on situational baseball and analytics to create an on-field product sufficient to reach the postseason. While the Rays have been "ahead of the curve" in using data to determine the best way to piece a game and a team together, the traditionally best teams are now seeing the light and understand that baseball, like society in general, is moving towards twenty-first-century technology. Since the Rays cannot raise the money that other teams in their division can, staying ahead in analytics is all the more crucial.

Tropicana Field and the Rays' local and international fan base are significant factors working against generating higher revenue. The Rays recently proposed moving the team to Ybor City, a trendy area within Tampa.³¹ The move would have given the team a new stadium that would have attracted fans and rivaled the more modern stadiums in the MLB.³² However, not long after the proposal to move to Ybor City was first made, the team announced that the idea was dead.³³ Using a fifty-fifty split of public and private funds to finance building the estimated \$900 million facility was too high for the MLB to agree to the project's feasibility.³⁴ The split season in Montréal is the Rays newest proposal to even the playing field with the larger market teams in their division.

31. Dayn Perry, *Rays to Reportedly Announce Where They Want to Build a New Ballpark in Tampa*, CBS (Feb. 8, 2018), available at <https://www.cbssports.com/mlb/news/rays-to-reportedly-announce-where-they-want-to-build-a-new-ballpark-in-tampa/> (last visited Apr. 2, 2021).

32. *New Stadium, New City: Rays Unveil Ybor City Ballpark Plan*, FOX TAMPA BAY (July 10, 2018), available at <https://www.fox13news.com/news/new-stadium-new-city-rays-unveil-ybor-city-ballpark-plan> (last visited Apr. 2, 2021).

33. Mike Axisa, *Rays Announce Stadium Project in Ybor City is Dead*, CBS (Dec. 11, 2018), available at <https://www.cbssports.com/mlb/news/rays-announce-stadium-project-in-ybor-city-is-dead-likely-locking-the-team-into-tropicana-field-through-2027/> (last visited Apr. 2, 2021).

34. *Id.*

III. MONTRÉAL AS A BASEBALL TOWN

Montréal was home to the Expos from 1969 until 2004.³⁵ Before the 2005 season, the team was sold and relocated to Washington, D.C., where they rebranded as the Washington Nationals.³⁶ The Expos were the first MLB franchise located outside of the United States—the Toronto Blue Jays followed their founding in 1977.³⁷ The team itself was never particularly successful on the field, and their business management was even less successful. They made the playoffs once, in 1981, and they had the best record in the National League East in 1994, but the MLB season that year was cut short due to a players' strike.³⁸ In terms of attendance, they were slightly under the National League average each year.³⁹ During their best years, 1979 through 1983, they averaged between 26,000 and 28,700 fans per game.⁴⁰

In 1999, Jeffrey Loria purchased a minority interest in the team for \$50 million and became the team's managing general partner.⁴¹ Eventually, he became a large majority owner of the team, with 92% of the team under his control.⁴² As the owner, his main objective was to get the team a new stadium, even though the city and team still had a large outstanding debt on the Olympic Stadium, where the Expos played.⁴³ Loria went on an off-season spending mission in 2000 to acquire new high-profile players to create more buzz around the team;⁴⁴ instead, the team fell to fourth place in the division.⁴⁵ He also raised the cost of

35. *Montreal Expos*, *supra* note 1.

36. *Id.*

37. William Humber, *Toronto Blue Jays*, CANADIAN ENCYC. (Feb. 7, 2006), available at <https://www.thecanadianencyclopedia.ca/en/article/toronto-blue-jays> (last visited Apr. 2, 2021).

38. *Washington Nationals Team History*, BASEBALL REFERENCE (n.d.), available at <https://www.baseball-reference.com/teams/WSN/index.shtml> (last visited Apr. 2, 2021).

39. *Washington Nationals Attendance Data*, BASEBALL ALMANAC (n.d.), available at <https://www.baseball-almanac.com/teams/montattn.shtml> (last visited Apr. 2, 2021) [hereinafter *Washington Nationals*].

40. *Id.*

41. Farid Rushdi, *How Jeffrey Loria Destroyed the Montreal Expos/Washington Nationals*, BLEACHER REP. (Feb. 2, 2009), available at <https://bleacherreport.com/articles/118868-how-jeffrey-loria-destroyed-the-montreal-exposnationals> (last visited Apr. 2, 2021).

42. *Id.*

43. *Id.*

44. Ian Wenik, *The Fraud of Jeffrey Loria: How One Man Ruined Two Franchises*, DANIEL LEWIS SPORTS (Nov. 22, 2012), available at <http://www.daniellewisssports.com/the-fraud-of-jeffrey-loria-how-one-man-ruined-two-franchises.html> (last visited Apr. 22, 2021).

45. *Id.*

broadcasting rights, but the increase was so steep that no English-speaking channel would carry the team's games.⁴⁶ This is significant because the sport has many fans in English-speaking market, and only broadcasting in French deterred those fans from watching the games. Loria then purchased the Florida Marlins in 2002, using the \$120 million that the League paid for the Expos and \$30 million from an interest-free loan provided by the League, and moved everything he could—from computers to personnel—to Florida from Montréal.⁴⁷ He sold the Expos to the MLB, knowing that the League wanted to move the team, and headed down to Florida where he would go on to mismanage another team.⁴⁸ Soon thereafter, the MLB and Loria solidified the deal, and the Montréal Expos relocated to Washington, D.C., where they were rebranded as the Washington Nationals for the 2005 season.⁴⁹

Recently, the city of Montréal has been trying to bring a Major League team back. The MLB began playing exhibition games in Montréal, and attendance has been tremendous.⁵⁰ In 2014 and 2015, the Blue Jays took on the New York Mets and the Cincinnati Reds, respectively, in Montréal.⁵¹ Attendance at these two game sets combined exceeded 96,000 fans.⁵² While these matchups were special, and the attendance certainly saw a spike with the increased fanfare, it was also an indication that MLB games in Montréal were ready to succeed.

The Montréal metro area is one of two metro areas in the United States and Canada that has more than 4,000,000 residents but does not have an MLB franchise.⁵³ The main criticism of a baseball team returning to Montréal is the belief that the Olympic Stadium is no longer adequate

46. Rushdi, *supra* note 41.

47. Ian Wenik, *What Does Jeffrey Loria Get for Mishandling Marlins*, ESPN (Aug. 11, 2017), available at https://www.espn.com/mlb/story/_/id/18658184/what-does-jeffrey-loria-get-mishandling-miami-marlins-pure-profit (last visited Apr. 2, 2021); see also Rushdi, *supra* note 41.

48. *Id.*

49. Tyler Kepner, *The Luckless Expos Gave Birth to the Nationals and a Lot More*, N.Y. TIMES (Oct. 18, 2019), available at <https://www.nytimes.com/2019/10/18/sports/baseball/nationals-montreal-expos.html> (last visited Apr. 2, 2021).

50. Jonah Keri, *More Than Just Momentum for MLB Return to Montreal*, CBS (Apr. 5, 2016), available at <https://www.cbssports.com/mlb/news/more-than-just-momentum-for-mlb-return-to-montreal/> (last visited Apr. 2, 2021).

51. *Id.*

52. *Id.*

53. Neil deMause, *MLB Expansion is Probably Inevitable, but Where and When?*, DEADSPIN (June 11, 2018), available at <https://deadspin.com/mlb-expansion-is-probably-inevitable-but-where-and-when-1830100867> (last visited Apr. 2, 2021) (the other metro area is Inland Empire, California, which counts as part of the Greater Los Angeles area).

for MLB games.⁵⁴ However, the city has the support of many former fans and players, such as Warren Cromartie, who has touted Montréal as a “baseball town.”⁵⁵

Today, in order for the MLB to operate in Canada and the United States, it first has to meet some regulations set out by federal law. Like large businesses throughout the United States, the MLB must respect federal antitrust laws.⁵⁶ Teams must comply with the Sherman Act, as amended under the Reagan Administration, to address foreign antitrust issues.⁵⁷ When a team exists outside of the United States but the parent organization operates in the United States, and “single entity ownership” election is adopted, then they are subject to the Sherman Act.⁵⁸ The United States prevents sports leagues from merging with similar leagues in other countries by prohibiting the acquisition of stock or assets where the goal is to create a monopoly.⁵⁹ In compliance with these laws, the MLB expanded into Canada, and the teams playing therein must also comply with Canadian antitrust law.⁶⁰

The death of the Expos is ultimately attributable to poor management and ownership, including the owner’s failure to put in the necessary capital and work. However, the Expos did prove that when the team was competitive, even in an outdated stadium, its fanbase showed up and supported them. The exhibition series at the Olympic Stadium, featuring the Toronto Blue Jays, also showed that Montréal’s fans will come out for good baseball.

The Rays had a playoff team in the 2019 season, after consistently competing for a playoff spot since 2008. With such a large population and the public outcry for a team, it is clear that Montréal could sufficiently support an MLB team. However, Montréal (or Canada itself) is not the problem, as we have seen the Toronto Blue Jays successfully operate a full-time MLB team in Canada. By splitting the season between Tampa and Montréal there are no incentives for the team or its players,

54. *Id.*

55. John Greenwood, *Can One Man’s Dream to Bring Major League Baseball Back to Montreal Come True?*, FIN. POST (Aug. 8, 2014), available at <https://business.financialpost.com/news/can-one-mans-dream-to-bring-major-league-baseball-back-to-montreal-come-true> (last visited Apr. 2, 2021).

56. 1 AARON N. WISE & BRUCE S. MEYER, INTERNATIONAL SPORTS LAW & BUSINESS 453 (Kluwer Law Int’l, 1997).

57. *Id.*

58. *Id.*

59. *Id.*

60. Competition Act, R.S.C. 1985, C-34 (Can.).

as the money necessary to leave Tampa Bay will exceed the gain accrued from expanding into the new market.

IV. THE CITIES COME TOGETHER

Both Tampa and Montréal are large cities with metropolitan areas able to support successful professional sports teams. As for a potential expansion, both cities have operated MLB teams long enough to qualify as sustainable host cities for MLB teams. When the Expos produced a decent on-field product—one that contended for a playoff spot—the city rallied behind them, as evidenced by above-average attendance.⁶¹ The Rays are currently a playoff contender in the American League, having gone to the postseason last year, and they are searching for the support they need to compete with the New York Yankees and Boston Red Sox in their division. However, their goal is to achieve something that has never happened in either Tampa or Montréal: a World Series win. With a low budget, the team has thus far relied on analytical baseball to compete.

The Rays believe that the city of Saint Petersburg's governance has neglected them and been a hindrance to building a ballpark in Tampa that resembles more modern MLB stadiums. The Rays have offered a few different proposals to the city, including a new stadium in Ybor City, Tampa; renovations to the current Tropicana Field; and lastly, the partial relocation to Montréal. In order to combat attendance issues at their current stadium, they believe a split season in Montréal would be helpful, although the now-departed Expos themselves were hindered by their own stadium conditions in Montréal. The Rays' inquiry and proposal will certainly have to address both stadiums and how the city of Montréal would fund a new and/or improved ballpark. Replacing one low-quality, attendance-detering stadium with two below-average stadiums that also hinder attendance is clearly not a business plan the Rays should adopt. The Rays believe that this partial move will make them the home team in two markets, subsequently expanding their large market international fanbase and raising their bottom-of-the-league average per-game attendance.

Many believe this partial relocation is being proposed merely to generate fear amongst Saint Petersburg's local politicians, and in so doing push them toward raising money for an adequate stadium. The Rays assured the League that they believe the move to Montréal is a possibility

61. *Washington Nationals*, *supra* note 39.

for them and that a partial relocation would be good for their business.⁶² The Rays are an innovative team on the field, utilizing different shifts defensively based on hitter matchups and having separate lineups for righty and lefty pitchers. Teams use this strategy to develop lineups that have more right-handed hitters when facing lefty pitchers and vice versa. This strategy got the team to the American League Divisional Series against the Houston Astros in 2019. The Rays pioneered strategic development and the use of performance-enhancing analytics. They now seek to implement a business model that is just as innovative, to remain perennial contenders in the AL East against the high-payroll Yankees and Red Sox.

V. U.S.-CANADA TREATY

If the Rays split their season between Canada and the United States, they will become an international company. The MLB itself is currently an international company because the Blue Jays' home base is Toronto. The U.S.-Canada Treaty was signed on September 26, 1980 and entered into force on August 16, 1984.⁶³ The Rays playing in Canada will create a U.S.-based organization that does business in Canada, thus subjecting it to the terms of the Treaty.⁶⁴

The first action a business must undertake is determining whether it is a resident of Canada for tax purposes.⁶⁵ A foreign company that has central management and control in Canada is considered a Canadian resident, subjecting its worldwide income to Canadian income tax.⁶⁶ This is where the U.S.-Canada Treaty is the most relevant because a business can glean the benefits of the treaty if it can show that it is a resident of

62. James Wagner, *Rays to Explore Making Montreal a Part-Time Home*, N.Y. TIMES (June 20, 2019), available at <https://www.nytimes.com/2019/06/20/sports/tampa-bay-rays-montreal.html> (last visited Apr. 2, 2021).

63. Canada-United States Convention with Respect to Taxes on Income and on Capital and Subsequent Protocols, U.S.-Can., Sept. 26, 1980, T.I.A.S. No. 11,087, 28 A.L.R. Fed.3d [hereinafter U.S.-Can. Treaty].

64. Stuart Lyons, *Cross-Border Costs: If You're Considering Doing Business in Canada, Pay Attention to Taxes*, BAKER NEWMAN NOYES (Dec. 1, 2016), available at <https://www.bnncpa.com/resources/cross-border-costs-if-youre-considering-doing-business-in-canada-pay-attention-to-taxes/> (last visited Apr. 2, 2021).

65. Todd Trowbridge, *The Taxation of U.S. Corporations in Canada and the Impact of the Canada-U.S. Tax Treaty on Corporate Residency Status*, GREATER IRVINE CHAMBER (Dec. 18, 2018), available at <https://www.greaterirvinechamber.com/news/latest-news/p/item/8649/the-taxation-of-us-corporations-in-canada-and-the-impact-of-the-canada-us-tax-treaty-on-corporate-residency-status> (last visited Apr. 2, 2021).

66. *Id.*

the United States for tax liability purposes.⁶⁷ Specifically, a business needs to avoid establishing a “permanent establishment” as defined within the treaty to not be taxed on any Canadian business profits.⁶⁸ A company that has revenue produced through a permanent establishment will be subject to a tax on that revenue.⁶⁹ The U.S.-Canada Treaty defines how revenue earned by an international entity is taxed in the specific country, but revenue taxed in another country with a higher tax rate will not result in net profitability. In Florida, the Rays are subject to a lower tax rate than they would be in Canada. Thus, the Rays will have to make a financial decision to determine whether the money generated from having a second home base will exceed the tax liability loss as owed to the Canadian government.

VI. HOW LIVING IN TWO COUNTRIES AFFECTS PLAYERS

A. Visas

At the beginning of the MLB season, the League issues permits to any foreign national that comes to North America to play for any of its franchises.⁷⁰ Typically, foreign-born players enter the United States by being issued a P-1A visa, which is approved by the U.S. State Department in conjunction with the consulate of the player’s home country.⁷¹

Those who are temporarily coming to the United States to perform a “specific athletic competition” at an “internationally recognized level of performance,” or an athlete who is “part of a team or franchise that is located in the United States” but is a member of a foreign league, are eligible for a P-1A visa.⁷² Since 2006, any player who comes to the United States at the minor league level also qualifies for a P-1A visa.⁷³

67. *Id.*

68. Lyons, *supra* note 64.

69. MINDY HERZFELD & RICHARD L. DOERNBERG, INTERNATIONAL TAXATION IN A NUTSHELL 129 (West Acad., 12th ed. 2017).

70. Barry M. Bloom, *MLB Players Aided Through Visa Process but Families Face Roadblocks*, GLOBAL SPORT MATTERS (May 10, 2018), available at <https://globalsportmatters.com/business/2018/05/10/mlb-visa-process-families-face-roadblocks/> (last visited Apr. 2, 2021).

71. *Id.*

72. *P-1A Athlete*, U.S. CITIZENSHIP & IMMIGR. SERVS. (n.d.), available at <https://www.uscis.gov/working-united-states/temporary-workers/p-1a-athlete> (last visited Apr. 2, 2021) [hereinafter U.C.I.S.].

73. Bloom, *supra* note 70.

Players are required to apply for these visas individually and are also required to submit an I-129 form.⁷⁴

This form comes from either their team, the MLB, or an agent who describes the type of work to be done in the United States, provides a copy of the contract to the team, and outlines the nature of events that will take place. For any player who make more than \$10 million in a season, this also includes tax documents or audited financial documents for the visa.⁷⁵ If a foreign player is only on a minor league team for one year, he must show that the team is part of a specific league and that he has a contract with the team.⁷⁶ To be eligible for the P-1A visa, a player must show that he is coming to a team that is part of an organization with six or more teams with a combined revenue of more than \$10 million, or to a team that is part of the League's minor league affiliates.⁷⁷ International players must have this visa to stay in the United States to play during a season.

Athletes may also apply for B-2 visas, which are meant for tourism and may be used by sports amateurs; B-1 visas, meant for business deals such as negotiating a contract or consulting with a business associate; or O-1 visas, which are meant for persons with demonstrated extraordinary abilities as met by acclaim in one's field of expertise.⁷⁸ These visas are designed for visitors and are required for individuals aged fourteen to seventy-nine years old.⁷⁹ Under a B-1 visa, a foreign-born player may come back to the United States to consult with business associates, attend conferences, settle an estate, or negotiate his contract.⁸⁰ A B-2 visa is for tourist activities like vacationing, visiting relatives, receiving medical treatment, or enrolling in a short educational study program.⁸¹ Playing games is not permitted under a B-2 visa, because it is considered employment, which is not allowed.⁸² While these visas are not intended for foreign-born players to compete in games during the season, they do give them the opportunity to attend to business and other personal matters

74. *Id.*

75. U.C.I.S., *supra* note 72.

76. *Id.*

77. *Id.*

78. *Visas for Athletes*, LEIBL & KIRKWOOD PC (n.d.), available at <https://usimmigrationlaw.net/athletes-2/> (last visited Apr. 2, 2021).

79. *Visitor Visa*, U.S. DEP'T OF ST. (n.d.), available at <https://travel.state.gov/content/travel/en/us-visas/tourism-visit/visitor.html> (last visited Apr. 2, 2021).

80. *Id.*

81. *Id.*

82. *Id.*

in the United States. All MLB players are required to have authorization to play in the United States—this includes Toronto Blue Jays players. As such, players competing in Canada would not need to consider additional authorization measures because they are already permitted to play in the United States.

During the 2018 MLB season, 27% of MLB rosters were comprised of foreign-born players.⁸³ Many of these players have families, but because athletes' wives and children are not eligible for P-1A visas, they must apply for P-4 visas.⁸⁴ P-4 visas are obtained by a P-1, P-2, or P-3 visa holder's spouse or child.⁸⁵ The P-4 visa holder may remain in the United States as long as the P-1, P-2, or P-3 holder maintains their legal status.⁸⁶ The visa applies to the spouse of the P-1 holder, and to any unmarried minor children.⁸⁷ During the length of their stay, they may not accept employment, but they may engage in full- or part-time study.⁸⁸ As discussed prior, there would be no added immigration complexities for players if the Rays split time between Tampa Bay and Montréal, because the families of foreign national players are already required to apply for a visa to be in the United States during the season.

All MLB teams have the opportunity to play in Canada during the season. Each American League team travels outside of the country throughout the year, and some National League teams travel to Canada for interleague play and/or the World Series. Canada allows players who make a living through sports to enter Canada with teams from foreign countries to compete; even though they are traditionally classed as foreign workers, the country adds no visa restrictions or penalties for them to enter.⁸⁹ The Canadian government believes that subjecting athletes to visa requirements for only a few games would be overly burdensome, and work visas for the athletes or the team's essential personnel are generally not required.⁹⁰

83. Stuart Anderson, *27% of Major League Baseball Players are Foreign-Born*, FORBES (Apr. 27, 2018), available at <https://www.forbes.com/sites/stuartanderson/2018/04/27/27-of-major-league-baseball-players-are-foreign-born/#e5dc6da77120> (last visited Apr. 2, 2021).

84. Bloom, *supra* note 70.

85. *P4 VISA - P1 Dependent Visa*, MESSER SMITH L. (n.d.), available at <https://messersmithlaw.com/p4-visa/> (last visited Apr. 2, 2021).

86. *Id.*

87. *See id.*

88. *Id.*

89. *See Working in Canada as an Athlete*, CANADAVISA (Sept. 2020), available at <https://www.canadavisa.com/working-in-canada-athlete.html#gs.sxf4ve> (last visited Apr. 2, 2021) [hereinafter CANADAVISA].

90. *Id.*

Despite this, moving the Rays to Canada for a portion of the year would create immigration headaches for both foreign and American players. A player signed with the Toronto Blue Jays, or the potential Montréal/Tampa Bay Rays, may have to demonstrate that he is needed as a foreign worker, in addition to showing that no Canadian worker is available for or has the expertise to do the job.⁹¹ This requirement is a Canadian regulation under the Labour Market Impact Assessment.⁹² The Rays differ from the Blue Jays because foreign players will need visas in both countries. Canada does not have a specific visa for athletes—only a uniform worker visa for foreigners.⁹³ The Canadian government would require an athlete or a coach hired by a Canadian employer to have a work visa.⁹⁴

Acquiring a work visa first requires submitting a Labour Market Impact Assessment that demonstrates a labor shortage, as a result of which the employer was unable to find a Canadian citizen to fill the role.⁹⁵ Once the employer receives the Labour Market Impact Assessment confirmation that a foreign worker is permitted to fill a job, they may apply for a work permit.⁹⁶ Canada does not always require professional sports teams to fill out a Labour Market Impact Assessment because the athletes tend to be extremely gifted, and it is readily apparent that the country does not have players with a similar skill set.⁹⁷

Rays players without dual citizenship in Canada and America would need to obtain one of the aforementioned visas in one or both countries. For players who are foreign nationals in both Canada and the United States, the visa process would be twice as long if they signed with a dual country team, such as the proposed Rays. The process of obtaining the visa, while not necessarily difficult, is an initial hoop that players coming to a new team would have to jump through in order to be eligible to play in home games. Players and coaches who play for professional teams in Canada or who represent Canada are required to obtain these visas.⁹⁸ Although the visa process in Canada is not as tedious as that of the United

91. See *What is a Labour Market Impact Assessment?*, GOV'T OF CAN. (Jan. 2020), available at <http://www.cic.gc.ca/english/helpcentre/answer.asp?qnum=163&top=17> (last visited Apr. 2, 2021) [hereinafter *Impact Assessment*].

92. *Id.*

93. See Alex Brosh, *Canadian Visa for Athletes*, COHEN, DECKER, PEX & BROSH (n.d.), available at <https://lawoffice.org.il/en/canadian-visa-for-athletes/> (last visited Apr. 2, 2021).

94. *Id.*

95. CANADA VISA, *supra* note 89.

96. *Impact Assessment*, *supra* note 91.

97. CANADA VISA, *supra* note 89.

98. *Id.*

States, it does create an extra step that foreign professional players would need to comply with in order to play for the team in Montréal.

B. Housing and Residency

Rays players would also need to acquire housing where they play a majority of their home games. Partially relocating the team across two countries will require players to navigate the challenges of finding housing twice. Playing half the season in Tampa will necessitate that the players find a home or apartment for themselves and/or their families in Florida, and another home for the other forty or forty-one games played in Montréal. This poses a threat to the Rays' organizational strategy, which utilizes a model that relies on lower-cost players who will now need to purchase or rent two living spaces throughout the season. Only thirteen players on the Rays forty-man roster made more than \$1 million in 2019, and of those only two made over \$10 million.⁹⁹ For a free agent player, who could pick any team to play on, the added housing and moving costs during the year will make playing for the Rays less appealing.

C. Non-Resident Speculation Tax

In Canada, there are laws that affect non-residents' ability to own and rent real estate. The first law that non-residents should be aware of is the Non-Resident Speculation Tax (NRST).¹⁰⁰ This tax subjects non-permanent residents to a 15% added tax on the value of property in the Greater Golden Horseshoe region, which extends up to Guelph.¹⁰¹ This property tax is an example of a provincial tax that players who buy homes would pay for the portion of the season they play in Canada. Foreigners with homes they rent out are subject to a 25% withholding tax on rental income.¹⁰² Non-residents are also required to secure a mortgage from a Canadian bank, where a 35% tax is not uncommon for non-residents.¹⁰³

99. *Tampa Bay Rays Contracts*, SPOTRAC (2020), available at <https://www.spotrac.com/mlb/tampa-bay-rays/contracts/> (last visited Apr. 2, 2021).

100. *Non-Resident Speculation Tax*, ONT. MINISTRY FIN. (Jan. 2021), available at <https://www.fin.gov.on.ca/en/bulletins/nrst/> (last visited Apr. 2, 2021).

101. *Id.*

102. Kazi Stastna, *Real-Estate Rules Don't Discriminate Against Foreigners*, CBC (Mar. 19, 2012), available at <https://www.cbc.ca/news/canada/real-estate-rules-don-t-discriminate-against-foreigners-1.1216517> (last visited Apr. 2, 2021).

103. *Id.*

These additional considerations make housing more complicated and expensive for MLB players without Canadian citizenship. The six-month temporary residency that players would have in Canada will allow them to rent or buy without additional paperwork or filing for permanent residency, but higher down payments and funding for mortgages would be an obstacle for seasonal baseball players. This obstacle exists because Canada usually grants a temporary resident visa for no more than six months.¹⁰⁴

D. Residency

A positive for players is that Canada does not subject foreign nationals to many regulations regarding buying or renting property.¹⁰⁵ Canada allows foreigners who spend less than six months per year in the country to keep a home without needing to apply for residency—this is particularly important for players who typically spend time in winter homes after the season.¹⁰⁶ This six-month temporary housing limit allows foreigners to either rent or buy property in Canada during this time.¹⁰⁷ However, if a foreign player spends more than six months in Canada, he would need to apply for permanent residency.¹⁰⁸

The MLB season can last as long as April 1 to November 1.¹⁰⁹ In this seven-month-long season scenario, only half of the games would be played in Montréal, allowing players to fit comfortably within the six-month temporary residence window. These added restrictions deter foreigners from buying or renting property in Canada because the laws are restrictive and penalize Americans or other foreign-born players by imposing higher fees. Since players would only have to live in Canada during the season, they would need to pay that extra cost. While this is not a specific penalty for players, it is an added issue that the Rays will need to consider and address.

Throughout the MLB season, many players are called up to join the big leagues club. Although a roster is made up of twenty-five players, in

104. *Canadian Temporary Resident Visa (TRV)*, VISA GUIDE (2020), available at <https://visaguide.world/canada-visa/temporary/temporary-resident/> (last visited Apr. 2, 2021).

105. Stastna, *supra* note 102.

106. *Id.*

107. *Id.*

108. *Id.*

109. *MLB Announces 2019 Regular Season Schedule*, MLB (Aug. 22, 2018), available at <https://www.mlb.com/press-release/mlb-announces-2019-regular-season-schedule-291431268> (last visited Apr. 2, 2021).

2019 the Rays had twenty-nine players get an at-bat, while thirty-three players registered an appearance on the mound.¹¹⁰ Players who spend most of the year in the minor leagues, but play in the MLB for at least one game, receive a pro-rated amount of the MLB's minimum salary, which was \$555,000 for the 2019 season.¹¹¹ Minor league players make far less: the average salary in 2018 for players in Single-A was \$6000; \$9350 in Double-A; and \$15,000 in Triple-A.¹¹² This means that players who get called up often do not have the money to purchase housing, and are forced to sleep on the couches of veteran players.

Securing housing in two places over the course of the year will be even harder for players because they now have two possible living locations, conceivably further limiting temporary options. A partial move to Montréal would certainly impose a larger financial burden and stress on Rays players—particularly the vast majority of their approximately sixty lower-paid players—because splitting time would further complicate their personal finances through increased costs of living.

Americans and foreign players who enter Canada expecting to find housing are forced to go through the Labour Market Impact Assessment.¹¹³ As such, players looking for housing will have larger down payments under Canadian law in an effort to guarantee that Canadian banks will not face loan foreclosures.¹¹⁴ With Canadian laws and regulations, finding housing could be trickier than simply walking into a real estate agency, finding a home suitable to a player's needs, and purchasing it.

110. *Rays Statistics*, MLB (2020), available at http://mlb.mlb.com/stats/sortable.jsp?c_id=tb#elem=%5Bobject+Object%5D&tab_level=child&click_text=Sortable+Player+pitching&game_type='R'&season=2019&season_type=ANY&league_code='MLB'§ionType=sp&statType=pitching&page=1&ts=1573522434782 (last visited Apr. 2, 2021).

111. *The Business of MiLB*, MiLB (2020), available at <https://www.milb.com/about/faqs-business#11> (last visited Mar. 17, 2021); *Minimum Player Salary in Major League Baseball from 2003 to 2020*, STATISTA (n.d.), available at <https://www.statista.com/statistics> (last visited Apr. 2, 2021).

112. Daniel Gallen, *Minor League Baseball Salaries Hover at Poverty Level While Major League Teams Earn Big Profits*, PENN LIVE (July 8, 2019), available at <https://www.pennlive.com/sports/2019/07/minor-league-baseball-salaries-hover-around-poverty-line-some-are-pushing-for-change.html> (last visited Apr. 2, 2021).

113. Wayne Carl, *3 Reasons Americans Can't Just Move to Canada and Buy Up Our Homes*, HUFFINGTON POST (Jan. 25, 2017), available at https://www.huffingtonpost.ca/ypnexthome/americans-moving-to-canada_b_14338892.html (last visited Apr. 2, 2021).

114. *Id.*

E. Taxes for Individuals

Income tax is a tax placed on revenue earned by individuals and businesses over a period of time. The Canada-United States Convention with Respect to Taxes on Income and on Capital and Subsequent Protocols (the U.S.-Canada Treaty, or Treaty) entered into effect in 1980.¹¹⁵ The Treaty applies to Americans who are subject to Canadian taxes and to Canadians subject to U.S. taxes.¹¹⁶ Under the Treaty, individual taxpayers are often able to pay fewer taxes to their non-resident country than they otherwise would.¹¹⁷ This facilitates the Treaty's goal of providing relief from double taxation to citizens of either country.¹¹⁸ Instead of paying a double tax, both countries' citizens report their foreign income and pay taxes on the income made in each respective country.¹¹⁹

Under Article XV of the Treaty, the first \$10,000 earned in Canada is exempt from gross income tax; any amount exceeding \$10,000 is only exempt if the taxpayer is present in Canada for less than 183 days within a twelve-month period, and if the employer is not a Canadian resident or a permanent establishment in Canada.¹²⁰ If a taxpayer is earning an international income over "\$200,000 at the end of the year or \$300,000 at any time during the year," then the taxpayer must file a Foreign Account Tax Compliance Act Form 8938.¹²¹

Under the United States' Foreign Earned Income Exclusion, "one could exclude the first \$100,000 from U.S. income tax by" showing they reside in Canada for more than 330 days per year.¹²² If married or filing jointly, one could deduct twice that amount, claiming a \$200,000

115. U.S.-Can. Treaty, *supra* note 63.

116. Department of the Treasury, *Information on the United States-Canada Income Tax Treaty*, IRS (Oct. 2015), available at <https://www.irs.gov/pub/irs-pdf/p597.pdf> (last visited Apr. 2, 2021).

117. *Id.*

118. *Using the United States-Canada Income Tax Treaty to Reduce Double Taxation*, TURBOTAX CAN. (Nov. 7, 2019), available at <https://turbotax.intuit.ca/tips/using-the-united-states-canada-income-tax-treaty-to-reduce-double-taxation-6229> (last visited Apr. 2, 2021).

119. *Id.*

120. Department of the Treasury, *supra* note 116.

121. *U.S. Canada Tax Treaty – What Expats Living in Canada Need to Know*, EXPAT TAX CPAS (n.d.), available at <https://www.expattaxcpas.com/canada/u-s-canada-tax-treaty-expats-living-canada-need-know/> (last visited Mar. 24, 2021).

122. *Id.*

deduction.¹²³ In 2019 the federal tax rate in Canada on income exceeding \$210,371 was 33%—but this is only part of the story since Canada also has provincial tax rates, which are analogous to states taxes in the United States.¹²⁴ In Québec, the province wherein Montréal is situated, the provincial tax rate was 25.75% on taxable income over \$108,390 in 2020.¹²⁵ These rates are much higher than both the 37% tax on income over \$518,401 in the United States and the 0% income tax rate imposed in the state of Florida.¹²⁶

The money that the players earn while in Canada would be subject to Canadian taxes.¹²⁷ These taxes would only apply to the income earned from the forty games the team plays in Montréal. Their tax rate in Canada would be 58.75%; Florida's rate would be 37%. The Treaty allows the first \$100,000, or \$200,000 if the player is married, to be exempt from tax. The Treaty's implications allow Canada, a less friendly tax country, to be less punitive to Americans—a positive if the players have no choice. But when players can pick their team, that 58.75% tax rate would be the highest imposed on any MLB team, which would discourage prospective players from signing with the Rays. Allowing the players to only pay a portion of their salary at the Canadian-Québec rate would soften the players' tax implications. From a Rays' player perspective, the Treaty's softening of Canadian tax impositions would still not be as attractive an option as only playing their home games in Florida.

123. *Foreign Earned Income Exclusion*, TAXES FOR EXPATS (n.d.), available at <https://www.taxesforexpats.com/expat-tax-advice/foreign-income-exclusion.html> (last visited Apr. 2, 2021).

124. *Canadian Income Tax Rates for Individuals*, GOV'T CAN. (n.d.), available at <https://www.canada.ca/en/revenue-agency/services/tax/individuals/frequently-asked-questions-individuals/canadian-income-tax-rates-individuals-current-previous-years.html#federal> (last visited Apr. 2, 2021).

125. *Id.*

126. *Tax Brackets*, DEBT.ORG (2020), available at <https://www.debt.org/tax/brackets/> (last visited Apr. 2, 2021).

127. Jeffrey Steinberg & Adam Scherer, *Tax Lesson During the Blue Jays' Off-Season*, ADVISOR (Dec. 11, 2015), available at <https://www.advisor.ca/tax/tax-news/tax-lessons-during-the-blue-jays-off-season/> (last visited Apr. 2, 2021).

VII. BUSINESS OPERATIONS

A. Income Tax Treaties

The purpose of an income tax treaty is to lower tax barriers and incentivize international trade.¹²⁸ When a tax treaty is in effect between the United States and another country, it lowers the other country's tax jurisdiction and, in effect, provides a lower U.S. tax burden.¹²⁹ In the United States, when there is a conflict between the Internal Revenue Code and an international treaty, the later-in-time rule applies.¹³⁰ The later-in-time rule allows whichever provision has been more recently promulgated to apply to the individual or entity paying income tax within the United States.¹³¹ Under an income tax treaty, the individual or business will not usually be subject to tax on the business income earned in the contracting state unless there is a permanent establishment.¹³² What constitutes a permanent establishment is covered below. If there is no permanent establishment, then the income that would otherwise be taxable in the contracting state without a treaty will not be taxable.¹³³

Tax treaties with the United States are typically initiated to eliminate the international double tax.¹³⁴ Instead, individuals and businesses that would be subject to paying in both countries have the ability to only pay tax where their money is earned. An agreement will typically contain provisions requiring a treaty partner to provide information to the other treaty partner as a means of keeping enforcement fair.¹³⁵ These exchanges will usually include names and dividends, royalties or interest accumulated, and other simultaneous examinations of taxpayers.¹³⁶ In this case, the specific treaty in place is the U.S.-Canada Treaty. The two countries honor this agreement and businesses and individuals earning income in both countries, or citizens of one country earning income in the other, are subject to its terms. With this international tax treaty background, we must now turn to the specific agreement to determine how it will affect the Rays.

128. HERZFELD & DOERNBERG, *supra* note 69.

129. *Id.* at 130.

130. *Id.*

131. *Id.*

132. *Id.* at 144.

133. HERZFELD & DOERNBERG, *supra* note 69.

134. *Id.* at 161.

135. *Id.* at 172.

136. *Id.*

B. Creating an Entity

The Rays operate as a corporation in the United States, under the name Tampa Bay Rays, Ltd.¹³⁷ A general corporation has shareholders and directors and can go by various indicators, including “Co.,” “Corp.,” and “Ltd.”¹³⁸ Once the Rays start playing in Montréal, they would need to establish a business within the province wherein they plan to operate; Québec is the applicable province here. The first step to establish a business in Canada is to meet the residency requirement by providing a Canadian address.¹³⁹

Since the Rays are a corporation operating as a limited company, it may be subject to various Canadian laws about incorporating a business within Canada.¹⁴⁰ Most businesses operating in Canada choose to use a corporation setup rather than a branch, which requires a permanent establishment to determine tax liability.¹⁴¹ However, if a corporation exists in another country, the business can apply for incorporation as a subsidiary of the parent organization within Canada.¹⁴² Under Canadian federal law, 25% of the business’s directors must be Canadian residents, and if a company has fewer than four directors, at least one director must be Canadian.¹⁴³ The province that a corporation operates in may also have residency requirements, although some do not.¹⁴⁴

If the Rays used a branch instead of a foreign corporation subsidiary, then they would have to meet the requirements for a permanent establishment, as outlined in the U.S.-Canada Treaty.¹⁴⁵ Further, they would need to form a Canadian place of business for corporate records and would be subject to a 25% branch tax levied on Canadian after-tax

137. *Tampa Bay Rays Baseball Ltd.*, BLOOMBERG (n.d.), available at <https://www.bloomberg.com/profile/company/7351090Z:US> (last visited Apr. 2, 2021).

138. *What Does LLC, Inc., Co., Corp., and Ltd. Mean?*, INCNOW (Oct. 23, 2020), available at <https://www.incnow.com/blog/2019/03/29/inc-llc-lp-sifting-through-the-abbreviations-and-choosing-the-right-entity/> (last visited Apr. 2, 2021).

139. Susan Ward, *How to Start a Non-Resident Business in Canada*, SMALL BUS. (Nov. 17, 2019), available at <https://www.thebalancesmb.com/nonresident-business-in-canada-2948595> (last visited Apr. 2, 2021).

140. *Entity Set Up*, DLA PIPER (May 27, 2020), available at <https://www.dlapiperintelligence.com/goingglobal/corporate/index.html?t=02-entity-setup&c=CA> (last visited Mar. 18, 2021).

141. *Id.*

142. Ward, *supra* note 139.

143. DLA PIPER, *supra* note 140.

144. *Id.*

145. *Id.*

earnings, minus the amount reinvested in Canadian businesses.¹⁴⁶ Businesses operating in Canada through representative branches are automatically treated as branch entities subject to the same guidelines outlined above.¹⁴⁷ The information included only applies if the business continues as a non-resident; the applicable regulations would differ if the Rays were headquartered in Canada, like the Blue Jays.¹⁴⁸

C. Permanent Establishment

A permanent establishment for businesses is well-defined within Article V of the Treaty.¹⁴⁹ Under Article V, a permanent establishment is “a fixed place of business through which the business of a resident of one of the two countries is wholly or partly carried out in, and can include a place of management or a workshop.”¹⁵⁰ A building for these purposes constitutes a permanent establishment if it exists for twelve months in either one of the specified countries.¹⁵¹ For a business with a permanent establishment in a country it is not principally from, the applicable profits acquired through that establishment are subject to the corporate tax rate and the allowable deductions of the country where it has its principal place of business.¹⁵²

In the United States, the current corporate tax rate is 21%; in Montréal, the corporate tax rate for a non-Canadian controlled private corporation (non-CCPC) is 11.6%, which is then added to the 15% federal rate, to a total 26.6% corporate tax.¹⁵³ Corporations that are not residents of Canada and/or non-CCPCs will be taxed on profits earned while operating within the country per the Treaty.¹⁵⁴

The U.S.-Canada Treaty is a helpful regulation enacted for companies conducting business in both countries because it allows them to keep their business profits taxable within their own country, and only subjects them to taxes on the profits generated while operating within the

146. *Id.*

147. Petar Chakarov, *Business Entities in Canada*, HEALY CONSULTANTS GRP. PLC (n.d.), available at <https://www.healyconsultants.com/canada-company-registration/setup-llc/> (last visited Apr. 2, 2021).

148. Ward, *supra* note 139.

149. Department of the Treasury, *supra* note 116.

150. *Id.*

151. *Id.*

152. *Id.*

153. 26 U.S.C. § 11 (2019).

154. Trowbridge, *supra* note 65.

other country.¹⁵⁵ In the Rays' case, the first issue is whether they would be considered a resident of Canada. In order to be considered a resident of Canada, the organization must have a "permanent establishment" located within Canada, which must exist for more than twelve months. The listed buildings within the Treaty do not specifically include "baseball stadiums," but "business centers" are considered permanent establishments if they have existed for longer than twelve months. Next, while the business of baseball is not specifically noted in the Treaty, we see that when a permanent establishment exists, as it would here, the business (team) will earn their profits in one of the countries taxed as though they are a resident.

The implication for the Rays organization is that it will be subjected to higher corporate tax on profits in Québec than it would be by staying in Florida. The rate is 26.6% when located specifically in the Québec province; it is 21% within the United States. In 2018, the Tampa Bay Rays had a \$27 million income.¹⁵⁶ Dividing that number by two, to \$13.5 million, reflects the Rays' earning half of all profits in the United States and the other half in Canada. Each half taxed per each country's respective rates would result in the Rays owing \$2.835 million in taxes in the United States and \$3.591 million in taxes in Canada before any deductions.

VIII. CONCLUSION

Even with a tax-friendly treaty between the two nations, a move does not seem to make the most financial sense for the team. The Rays would have to decide that the tax liability imposed on them would be offset by the increased profits they would be able to generate while operating in Montréal for half of the year. Thus, the move does not appear to be in the Tampa Bay Rays' best economic interests.

155. *Id.*

156. Christina Gough, *Operating Income of the Tampa Bay Rays from 2002 to 2018*, STATISTA (May 6, 2020), available at <https://www.statista.com/statistics/829626/tampa-bay-rays-operating-income/> (last visited Apr. 2, 2021).