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Orienteering Tasmania – Payment of Coaches

Background to the Issue

Since 2016 OT has sought professional advice on a number of occasions on the correct way to pay orienteers who provide coaching or other services to Orienteering Tasmania. This advice has often been conflicting with some professionals suggesting these are ‘honorariums’, other suggesting these should be ‘salary and wages’; and some suggesting these could be thought of as ‘contracts’.

In the Orienteering Tasmania Annual Financial Report for 2016, our auditors recorded the following qualification:

“Payments made for some services received (that are not considered to be "honorariums" or for "volunteer hobby activities") have not been supported by a valid tax invoice or had an employee PAYGW certificate issued and have not had 49% ABN tax deducted.”

Following this audit qualification and the conflicting advice we had received, the Orienteering Tasmania Board felt it had no alternative to seeking a ruling from the Australian Taxation Office. This was done with the full knowledge that whatever the ATO decided, OT would have to comply with regardless of how painful that might be going forward.

Seeking a Ruling from the ATO

In May 2017, OT applied for a private ruling relating to PAYG withholding obligation. In our submission to the ATO we explained our constitutional responsibilities and informed them that OT runs orienteering events regularly and that activities are generally conducted by members volunteering their services.

We explained that OT receives grants from State and Commonwealth government to undertake certain projects and that some of the projects involve purchase of capital items, such as production of a map or specialised orienteering equipment. Others may require a considerable amount of labour intensive activities such as the provision of coaching services in schools. We pointed out that OT makes payments to members for their services in these sponsored projects.

We further explained that OT receives grants to develop orienteering activities in schools and the general community and that OT has a verbal contract in place to pay its members \$25.00 per hour for their services as well as reimbursing members for reasonable costs. We also commented that OT provides the majority of the necessary equipment but members may use their personal orienteering gear.

We pointed out that OT's motive in making the payments is to pay members for their services and their time in carrying out the project at a reasonable rate. We added that depending on hours of services, amounts of payments to each member would vary and that there is no regularity of the payment and no expectation or guarantee of work or continuity of work. We also informed the ATO that none of the members in the project conduct any business of coaching, nor are they professional orienteers.

The Ruling from the ATO

In mid-July, OT was notified of the outcome of the private ruling. Because it is a private ruling, I don't believe we can distribute the actual document to other parties. However, I do believe that I can provide a summary of the ruling.

My summary of the key points made in the ATO ruling are:

1. Members who receive payments at a set hourly rate as a reward for their services are considered as OT employees. OT is therefore required to withhold an amount from each payment that it makes to the members.

2. There is no legal definition of 'volunteer' for tax purposes. The ATO referred us to the Macquarie dictionary for a general definition of a volunteer.
3. OT has a verbal contract in place to pay members at a set hourly rate for provision of their services and these payments are expected and represent a direct reward for services provided. Thus the ATO believes that in provision of their services, the members are not volunteers of OT.
4. The ATO also informed us that income of a resident taxpayer includes ordinary income derived directly or indirectly from all sources during the income year and that earnings from irregular work are just as much income as earnings from regular employment.

As to be expected, there was considerable depth to the reasons provided for the ATO's decision. These included discussion on key indicators that have been regarded by courts as to whether an individual is an employee or an independent contractor. These indicators include control, operating on own account, 'results' contracts, risk and provision of tools, equipment and expenses. Other indicators include the right to suspend or dismiss the person engaged, the right to the exclusive services of the person engaged, provision of benefits such as annual, sick and long service leave etc.

For OT the following indicators were considered by the ATO:

-) The members were not running their own business or enterprise
-) The payments are set at an hourly rate
-) The members are contractually required to personally perform the work
-) The members bear little commercial risk or responsibility for any defect or injury
-) The members are provided with majority of the necessary equipment and are reimbursed for reasonable expenses incurred

What the ATO Ruling means for OT

The ruling clearly states that members who receive payments at the set hourly rate as a reward for their services, are employees of OT and in making these payments, OT is required to withhold an amount from each payment as under section 12-35 of Schedule 1 to the TAA. In addition, if a member does not provide OT with a TFN declaration, OT needs to withhold 49% of the payment.

As employees, OT is required to pay members using the correct award. To pay our coaches as level zero on the correct award costs just over \$30 per hour. We are also required to meet superannuation requirements and to provide workers compensation insurance.

To manage the additional work in preparing a payroll for about a dozen employees, OT has engaged a payroll service provider. Their cost to manage the \$30000 annual payroll for 12 employees is \$99 per month. There was also a one off setup cost of \$165. The payroll service provider deals with all the tax and superannuation requirements as well as notifies employees of their pay, tax and super. A spreadsheet of employees' hours is prepared each month and emailed to the provider who uses MYOB that creates a payroll spreadsheet for the OT Treasurer to pay the employees via direct deposit.

The employees that are used as orienteering coaches in schools are directly employed by OT, so the insurance provided by OA does not cover them. Thus OT has also had to take out its own workers compensation policy to cover these employees. This policy costs around \$700 annually.

Ian Rathbone
OT President

