

Appendix 2 – Typical Examples

Casual Tutor

Circumstances:

- casual tutor required for a semester for four hours per week;
- has a bona fide consultancy business and requests to be paid on invoice.

Questions:

- does the nature of the work overrule the existence of the bona fide business?
- may Charles Sturt University pay the consultancy business or must the individual be paid via payroll and PAYG instalment tax withheld?

ATO Opinion:

- Almost certainly in this type of case PAYG instalments tax must be deducted. An individual is being employed in his or her capacity along normal employer/employee lines. If the University engages a specific person for a fixed session and desires the right to control and direct that person's work, then the person is an employee engaged in a personal capacity.
- The fact that a person has a bona fide business is not significant either way. Charles Sturt University has no option in the manner of payment simply because the person happens to have a consultancy business and wants payment to that business rather than personally.

Visiting Professional

Circumstances:

- A visiting professional speaking or demonstrating on a particular topic not exceeding five hours per session for an award course. e.g. a doctor to speak about anatomy.

Question:

- Does CSU have to pay the doctor as an individual and deduct PAYG instalment tax?
- Is it appropriate for CSU to pay the practice on invoice?

ATO Opinion:

- CSU has no obligation to deduct PAYG instalments tax if the person is a resident of Australia and an ABN has been provided. If an ABN is not supplied then an amount of the maximum tax rate must be deducted under PAYG withholding laws. Alternatively, if the person is a visiting non-resident then a "Statement by a Supplier" declaration should be obtained from the supplier (Australian Taxation Office form NAT3346).
- CSU is engaging a specialist professional on a one off or short term basis to lecture in his or her field of expertise. Neither CSU nor the professional will intend to establish a relationship whereby the University has power and control over the professional, as exists in a classic employer/employee relationship.

- CSU may pay the practice on invoice. The guest lecturer will retain his or her status as an arm's length professional and may be paid on invoice. If the professional's practice is releasing him or her for the period of the lecture, then it may be appropriate for the practice to invoice CSU.

Distance Education Package Preparation

Circumstances:

- An individual is requested to write a distance education package for a particular subject. This individual is not a current employee CSU. The content of the package is stipulated, but the person would be required to produce the package in his or her own space and time, using personal equipment and materials.
- The package is requested by a specific date and CSU gives broad guidelines as to content.

Question:

- Is CSU purchasing a package of material from the individual?
- Is CSU required to pay the individual and deduct appropriate PAYG instalment tax?

ATO Opinion:

- CSU is contracting for a result, i.e. to deliver a distance education package at an agreed time for an agreed sum.
- CSU would not be required to deduct PAYG instalment tax. The relationship is not one of an employee/employer. The person arranges his or her own work timetable, is not subjected to ongoing control, supervision and monitoring and is responsible for providing their own resources. The person is also not paid on a time (hourly) basis. It should be noted that often the contracted fee is based on an estimated number of hours at a set hourly rate. The fact that this is the agreed basis of payment is not determinative in assessing the relationship; it is merely a reasonable and justifiable method of putting a proper value on the work. The person is to be paid the sum whether it takes more or less hours than that estimated, and the status of the person would still be that of an independent contractor.
- The provision of an ABN or Statement by Supplier form applies.

Casual Tutor/Distance Education Package Preparation

Circumstances:

- A casual tutor is employed for four hours per week delivering tutorials.
- Person is then asked to write a distance education package for a particular subject.
- PAYG instalment tax is deducted from payment for the tutorial work

Question:

- May CSU pay on invoice for the distance education package if the individual has a bona fide business?

ATO Opinion:

- The terms of the actual engagement will decide the issue, and the answer may vary in different cases depending on the stipulated conditions. The comments in (A2.3) may apply here and it is likely that CSU has no obligation to deduct PAYG instalment tax from the payment.
- The fact that the person has a bona fide business is a factor, but not an overriding factor. See comments in (A2.1).
- Other factors that may lead to a different interpretation are the number of hours worked per week and the extent of University facilities used free of charge.

Presenters

Circumstances:

- An individual from another institution is requested to give a presentation to staff at a training session.
- CSU arranges and pays travel, accommodation and incidental costs.
- A fee is agreed for the presentation.
- A request is received from the presenter on institution letterhead to make payment to the institution.

Question:

- Is it appropriate for CSU to pay the institution?
- Should CSU pay the individual and deduct PAYG instalment tax?

ATO Opinion:

- It is appropriate for CSU to pay the institution.
- The payment does not have to be made to the individual and hence no PAYG instalment deduction need be made.
- Charles Sturt University would expect to receive a valid tax invoice, including GST, from the institution.

CSU Employees Working For Another School/Division

Circumstances:

- A full-time academic member of staff is asked by a different division to write a mail package.
- The academic has a bona fide consultancy practice.

Question:

- May the consultancy practice be paid on invoice despite the individual doing the work being paid as a full-time employee?
- Must PAYG instalment tax be deducted from the payment to the individual?

ATO Opinion:

- In the circumstances CSU should not pay on invoice. It would seem likely that PAYG instalment tax should be deducted. The fact that the person is a current full-time employee of CSU and already under direction and control is an important factor. Also it may be that the person will be permitted to use CSU facilities and ostensibly undertake the task concurrently with normal duties.
- These factors point to the payment being salary or wages for PAYG purposes, i.e. a payment wholly or principally for labour to a person who is already an employee, and who carries out the activities in a place and manner expected of, and with the facilities available to, an employee.
- The fact that the person has a bona fide consultancy practice is a factor, but not an overriding factor.

Student Undertaking Project

Circumstances:

- A student is asked to design a cover for a report or design a logo etc. for a nominal fee.

Question:

- Is CSU required to deduct PAYG instalment tax from the payment?

ATO Opinion:

- PAYG instalment tax would not have to be deducted from the payment. The contract is one for a result, not a payment based on time for services. The student arranges his or her own work timetable, is not subject to ongoing control, supervision or monitoring, and is not paid on a time (hourly) basis.
- If the student is not carrying on an enterprise in Australia (ie is not conducting a business as the task is a “one-off” activity, then a Statement by Supplier declaration should be obtained from the student.
- Alternatively, if the student is carrying on an enterprise in Australia, even if only in a small way, then the student should provide a valid tax invoice.

Running Workshops

Circumstances:

- A person is a professional painter and has his or her own studio and registered business name.
- He/she is requested to present a workshop.
- The workshop runs for five days.

Question:

- Is CSU required to deduct PAYG instalment tax from the payment?
- If the person was an individual with no registered business name do the circumstances change?
- If the individual requests payment via an invoice from his/her company do the circumstances change?

ATO Opinion:

- Many factors are present here. If CSU plans the course, sets the topics, outlines the expected format, sets the timetable and provides the venue and materials then it is likely that the relationship is one where PAYG instalment tax deductions must be made. Alternatively, if a person is required to devise the program, arrange topics and timetable and provide materials etc. then the relationship may have the character of one of result and as such may be outside PAYG instalment tax requirements.
- Whilst a registered business is a factor, it is the nature and terms of the engagement rather than the background circumstances of the person which decides the issue.
- In the case where the workshops are outside the PAYG requirements, then a valid tax invoice or a statement by supplier form must be submitted by the individual, otherwise maximum rate of tax must be withheld under PAYG withholding laws.

Reviewing Thesis

Circumstances:

- An individual is asked to review a thesis.
- An honorarium is paid

Questions:

- Does CSU have an obligation to deduct PAYG instalment tax?
- Are the circumstances of the individual significant?

ATO Opinion:

- PAYG withholding provisions may apply to the payments for thesis reviews.
- Payments made for thesis reviews have all the hallmarks of income in the hands of the recipients; they are payments which are expected and are for services rendered.
- While the payments are referred to as honoraria, there seems little doubt that they lack the essential characteristics necessary to be regarded as honoraria for Australian income tax purposes. ie., the sums are routinely paid; they are expected by the reviewer; the sums paid are set according to an established scale and based roughly on the time and effort involved.
- This is contrary to a true honorarium, ie a payment or gesture on personal grounds; an ex-gratia payment; a bona-fide "thank you" gift. True honorariums would not be subject to PAYG withholding laws.
- Australian academics undertaking this work will need to provide CSU with an ABN, or alternatively complete a TFN notification and be dealt with under those standard arrangements. An Australian academic is unlikely to have an ABN for irregular thesis reviewing, and a practical alternative is to agree to be treated under the TFN arrangements and receive a Payment Summary at year-end.
- Statement by Supplier (NAT 3346) should be obtained from non-residents performing the work in Australia.

Overseas Engagement

Circumstances:

- A non-resident of Australia is engaged to perform supervision of distance education students overseas.

Questions:

- Is there an obligation to deduct PAYG instalment tax?

ATO Opinion:

- The definition of “salary or wages” excludes exempt income. Income derived by a non-resident from sources wholly out of Australia is exempt income. (i.e. not assessable to Australian tax.)
- The source of remuneration under a normal contract of employment or a contract for service is the place where the duties or services are performed, not the place where payment might be made.

Visiting Artists

Circumstances:

- A person is engaged as a visiting artist and has his or her own studio and registered business name.

Questions:

- Is CSU required to deduct PAYG instalment tax from the payment?
- If the person is an individual with no registered business name do the circumstances change?
- If the individual requests payment via an invoice from his/her company do the circumstances change?

ATO Opinion:

- The arrangement would appear to be one very similar to (A2.8). If CSU plans the program, outlines the expected format, sets the timetable and provides the venue and materials then it is likely that the relationship is one where PAYG instalment tax deductions must be made. On the other hand, if the artist is required to devise the program, arrange the material that he or she thinks should be covered, be available at times that he or she dictates and provide materials etc., then the engagement may be one of result and, as such, may be outside PAYG instalment requirements
- In this situation provision of an ABN or a Statement by Supplier form will need to be made.
- Again, as in (6.8), it is the nature and terms of the engagement rather than the circumstances of the person, which decides the issue.

Overseas organisations providing services in an offshore location and requiring payment to an Australian bank account.

Question:

- What is the situation in regard to withholding provisions and ABN notification?

ATO Opinion:

- In situations such as this the University may experience some difficulty in determining whether or not the provider of the supply is carrying on an “enterprise in Australia” in the terms of the GST Act particularly where the supplier appears to have a “permanent establishment” in Australia e.g. an office/home address or an agent name and address.
- Most offshore suppliers to the University requiring payment to an Australian bank account provide an ABN with their invoice and the withholding provisions of the Act do not apply. In the event that the offshore supplier does not hold an ABN, a Statement by Supplier form would be appropriate in this instance. However, should the offshore supplier choose not to supply either an ABN or a Statement by Supplier form, then the withholding provisions of the Act will need to apply.