

Orienteering clubs - Employees, PAYE and other implications

At the SWOA November 2013 meeting I agreed to circulate some comments not covered in the recent Focus tax article on PAYE and other matters.

The issue

Where an organisation has an employee there is a wealth of legislation that comes into play. This includes an obligation to:

- deduct PAYE
- pay class 1 national insurance contributions ('NIC')
- administer statutory payments such as statutory maternity pay and statutory sick pay
- follow the minimum wage legislation
- follow employment law

It is onerous stuff and is to be avoided except in very narrowly defined circumstances

Minimum wage legislation and volunteers

The minimum wage legislation is widely drawn to stop companies avoiding its responsibilities. This makes life difficult where people who are employees want to volunteer as well. This would mean that for each hour worked whether as employee or volunteer the individual should be paid the equivalent of £6.31 per hour.

Example: A club member is paid for mapping. It is not uncommon for the task to take a lot longer and they spend many more hours doing it but do not charge. If they are a volunteer or self employed mapper there is no problem for the club. If they are an employee mapper they should be paid £6.31 per hour for each hour worked.

Because we are a largely volunteer sport the minimum wage legislation is potentially the most onerous obligation of having an employee unless carefully monitored.

Employee or self employed

It is a matter of fact, developed by case law, whether someone is an employee or otherwise. HMRC cannot decide this unilaterally. If they find income not being taxed it is easier for them to challenge the employer as they are often larger organisations plus they get employer NIC making more tax in total.

If an individual is registered self employed then the tax should have been paid by the individual on income earned. There is less financial incentive for HMRC to investigate if tax is being paid by a self employed person but they do still look at specific arrangements.

In deciding whether someone is self employed there are a number of aspects to consider. These build up a picture of the correct category. HMRC has an employment status indicator software tool. This can be used to determine the status but has its limitations by virtue of the small number of black and white questions ie it

only covers some shades of grey. The aspects associated with self employment include:

- ability to delegate the work
- not subject to day to day supervision
- can choose the time of carrying out the work subject to deadlines
- provide own tools and equipment
- has expertise
- has more than one customer (desirable although not essential)
- takes the risk that if they do not deliver the service they will not get paid

Examples – mapping

1. Within our club the most significant payments to individuals other than for actual expenses are to mappers. Commercial mappers should be self employed. They would be registered self employed, recognised as having skills nationally or regionally, ideally work for a set or capped fee, decide on their hours and when to perform the work (with an overall deadline), provide their own tools such as sighting compasses, mapping software or GPS.
2. A club wants to encourage mappers. It provides training and buys some equipment which the trainee mappers are able to use. If they do it as a volunteer all expenses can be reimbursed and mileage of up to 45p per mile can be paid (HMRC official rate).
3. In example 2 if the club then paid them for a mapping project they are more at risk of being an employee. If a club member is considering providing mapping services they should buy their own equipment or possibly rent if from a club for a commercial payment. They should agree a fee in advance (ideally) or at the very least have a fee cap. Some commercial mappers charge a daily rate and that is the basis they wish to work. That does not mean they are an employee. The position might be different for a club mapper starting off as overall they may meet fewer self employed indicators.

Coaching

Coaching gets more messy. Individuals may coach schools and be an employee. They may do coaching for the club and be paid expenses. They may do some self employed coaching. There are qualifications required in order to coach and courses to attend. Coaches must also consider whether their activity is covered by insurance be it by a club, a school or themselves. The club will need to examine any payments made to coaches including payments for courses to decide whether it is in a capacity of a club volunteer or self employed professional or employee. It may be appropriate for self employed coaches to pay some or all of course fees.

Actions for clubs

1. Identify the exposure

Does the club make payments to individuals other than for actual expenses incurred including mileage of up to 45p per mile? If so what are they for?

2. Are payments made to someone who is a self employed person?

Ask the recipient if they are registered as self employed? If not then the arrangements are open to challenge

3. Review how arrangements are structured

Try to make arrangements with people so that they fall on the self employed side of the divide. Using the employment status indicator can help you see the implications from how arrangements are structured.

4. Know if you have employees

If you conclude someone is an employee work out the total costs – tax, NIC and minimum wage of those arrangements and decide whether you can afford it.

Unrelated matter – VAT on access charges

In recent months two landowners have added VAT to access charges. One withdrew the charge, the second, South West Lakes is reviewing the position. I note that on the BOF website the copy of the Forestry Agreement states that their charges are an exempt supply for VAT purposes. This means no VAT is added.

South West Lakes said that:

We are not able to treat this as an exempt supply under HMRC notice 742 as I'm not aware the hire was not for more than 24 hours or part of a series of 10 or more events at our sites which is required for the exemption.

Extract from HRMC Notice 742: 5.1

If you let facilities for playing any sport or for taking part in any physical recreation your supply is normally standard-rated. But, if the let is for over 24 hours or is for a series of sessions your supply may be exempt.

I have responded and said:

- Paragraph 5.2 of notice 742 defines a sports facility. I do not think there is anything in that definition which is relevant to our sport ie you are not providing any sports facilities, as defined, for us to carry on our sport. All you provide is access to land. You will see that in paragraph 5.2 they give the example of an ordinary village hall not adapted in any way for sport but used for sporting activity. Such lettings are treated as exempt because they are not deemed to be a sporting facility.

I await a response but believe SW Lakes are incorrect to charge VAT. I suspect they have been charging lots of other non orienteering groups as well.

Nicholas Maxwell

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