CR 2025/20 - National sporting organisations - financial support provided to elite athletes

Status: **legally binding**

Class Ruling

National sporting organisations – financial support provided to elite athletes

Relying on this Ruling

This publication (excluding appendix) is a public ruling for the purposes of the *Taxation Administration Act 1953*.

If this Ruling applies to you, and you correctly rely on it, we will apply the law to you in the way set out in this Ruling. That is, you will not pay any more tax or penalties or interest in respect of the matters covered by this Ruling.

Table of Contents **Paragraph**

What this Ruling is about

1. This Ruling sets out the taxation obligations for a national sporting organisation (NSO) who enter into an agreement with an elite athlete to provide direct and indirect financial support to support the athlete's training, competition and living requirements.

2. Details of this scheme are set out in paragraphs 10 to 43 of this Ruling.

3. All legislative references in this Ruling are to Schedule 1 to the *Taxation Administration Act 1953*, unless otherwise indicated.

Who this Ruling applies to

4. This Ruling applies to you if you are an NSO that uses an Athlete Support Agreement to provide any of the following types of financial support to elite athletes:

- unspecified payments
- travel support payments
- equipment support payments
- training support payments
- appearance fees
- parenting support payments.

Status: **legally binding**

When this Ruling applies

5. This Ruling applies from 6 March 2025 to 30 June 2029.

Ruling

Pay as you go withholding obligations

6. Athletes receiving payments under an Athlete Support Agreement are not considered to be employees of the NSOs, and it is assumed that athletes are not carrying on a business of participating in sport.

7. The financial support payments made to athletes under an Athlete Support Agreement are not considered to fall within any of the types of withholding payments listed in section 10-5 such that none of the pay as you go (PAYG) withholding provisions in Division 12 apply to these payments.

8. On this basis, NSOs do not have a PAYG withholding obligation under Division 12 for payments made to athletes under an Athlete Support Agreement.

Fringe benefits tax obligations

9. Where NSOs make a payment or provide a benefit to an athlete under an Athlete Support Agreement, a fringe benefits tax obligation will not arise for the NSO.

Scheme

10. The following description of the scheme is based on information provided by the applicant. If the scheme is not carried out as described, this Ruling cannot be relied upon.

Roles of various sporting bodies

Australian Sports Commission and Australian Institute of Sport

11. The Australian Sports Commission (ASC) is the Australian Government agency responsible for supporting and investing in sport at all levels.

12. The Australian Institute of Sport (AIS) is the part of the ASC that is responsible for supporting and investing in high performance sport in Australia. It is the role of the AIS to lead and support the high performance sport system and foster alignment and collaboration across various sport partners. Relevantly, the AIS works in close collaboration with 45 high performance-funded NSOs, namely in Olympic and Paralympic (winter and summer) or Commonwealth Games sports.

13. The AIS allocates investment for high performance and national programs, performance pathways, people development and wellbeing, research and innovation. The support provided includes giving NSOs and athletes access to high performance facilities, services and coaching programs.

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National sporting organisations

14. Each NSO supports either an individual sport (for example, Hockey Australia for hockey) or a category of sports (for example, Paddle Australia for canoeing and kayaking). To be recognised by the ASC, and therefore to work in collaboration with AIS, NSOs are required to:

- be a 'sport' as defined and understood in Australia, as opposed to another activity type
- be the pre-eminent organisation responsible for the sport in Australia and recognised as such by an International Federation
- be the organisation that is responsible for the development of the sport in Australia
- have been incorporated for at least 3 years, be not-for-profit, and be an Australian company limited by guarantee
- have sound governance policies and practices aligned with the ASC Governance Principles, and be financially sustainable and an ongoing concern
- have demonstrable national reach, with active members or affiliate bodies collaborating with the organisation for the sport nationally and locally
- have at least 1000 active members and have systems in place to register and maintain member details
- be accountable for establishing, maintaining and enforcing key integrity requirements at all levels in the sport.

15. NSOs organise training programs for the athletes, and also provide them with:

- access to training, gym and recovery facilities
- access to high performance coaching services
- strength and conditioning, physiological, wellbeing and nutritional services
- access to specialist psychology services through national service providers engaged by the NSO, and
- equipment and uniforms for training, competition, and travel.

16. In pursuit of the objective of driving elite sport in Australia and creating a safe environment for athletes and teams, the AIS and NSOs set standards and expectations for athletes that represent the country. These include:

- setting fitness and training requirements to maintain elite level performance
- having reporting responsibilities with respect to health-related issues that may impact their participation in sport
- adherence to policies around conduct (including anti-doping policies), and
- athletes making commitments to be available to represent Australia (and not another country).

Status: **legally binding**

Training programs

17. The AIS and NSOs provide athletes with access to facilities, programs and services that are customised for each sport, and for each individual athlete, in order to assist in optimising elite-level performance.

18. Training programs may differ in design depending on the sport, including, in particular, whether the sport is team-based or individual.

19. Team-based sports (such as hockey and water polo) rely on athletes' familiarity with one another and the ability of the team to train together to practise particular patterns of play. For such team-based sports, centralised or camp-based training programs are common.

20. Some non-team-based sports also opt for centralised training programs, to optimise access to services, which may include facilities, equipment or coaching programs. Others adopt decentralised programs, or a combination of centralised and decentralised programs, as better suited for their needs.

21. At the individual level, athletes are asked to agree to individual programs to optimise their performance.

22. The needs of both team and individual athletes, in terms of training programs, also vary in accordance with where they are in their competition cycle, including whether there are upcoming Olympics, Paralympics, Commonwealth Games, world championships or sport-specific leagues.

23. Athletes will discuss training programs with coaches and relevant supporting bodies, to optimise their performance for targeted events.

24. The AIS and NSOs are looking at means to invest some of the funds they generate into elite level athletes, to enable them to continue to pursue their sport in a manner that gives them the best chance of success (without unnecessary financial hardship), and to inspire the next generation.

Athlete Support Agreement

25. The proposed scheme is for an NSO to enter into a contractual agreement with selected elite athletes (Athlete Support Agreement):

- for the NSO to provide financial benefits to the athlete, to support the athlete's pursuit of sport at an elite level, and
- to record minimum expectations of the athlete and of the NSO, in relation to their dealings with each other in connection with the sport.

26. The aim of the scheme is to provide financial support to enable selected elite athletes to focus on training and competitions, and to achieve set targets in Olympic, Paralympic and Commonwealth Games sports.

27. A template Athlete Support Agreement is to be entered into directly by participating NSOs and selected elite athletes, for a fixed term ranging from 12 to 24 months.

Status: **legally binding**

Financial support

28. As training and competition environments for athletes differ between sports, so do funding models for NSOs, with the following types of payments potentially being made to elite athletes.

Option 1 – unspecified payments

29. The NSO makes payments to elite athletes of $3,000 to $50,000 per annum, via a single lump sum, or quarterly or monthly instalments, with discretion as to how the funds are to be applied.

Option 2 – travel and equipment support payments

30. The NSO might pay for the following costs by elite athletes, either by way of reimbursing the athlete for out-of-pocket expenditure on those items, or paying for them directly on behalf of the athlete:

- flights, travel and accommodation to attend selected competitions or to participate in training programs
- sport-specific equipment.

Option 3 – training support payments

31. The NSO:

- covers costs for intensive training or competition periods by way of per diem allowances – this could include payments for
  - periods spent travelling to selected competitions away from an elite athlete's base location
  - training commitments away from an elite athlete's base location
  - training commitments where the commitments exceed an agreed intensity threshold (for example, 25 hours in a week), or
- pays a per diem allowance for regular training commitments.

Option 4 – appearance payments

32. The NSO pays an elite athlete on a per-appearance basis, to compensate for the athlete's time, reimbursement for out-of-pocket expenses, or both for undertaking appearances for:

- corporate sponsors
- grassroot programs, or
- events where the sport is required to be represented.

Status: **legally binding**

Option 5 – parenting support payments

33. The NSO makes payments to an elite athlete with parenting responsibilities, in the form of additional in-kind accommodations, such as:

- paying for flights and accommodation for family members to travel with the athlete, and
- arranging for a dedicated vehicle with a child seat.

Eligibility considerations

National sporting organisations

34. All NSOs will have the option of adopting the Athlete Support Agreement. No NSO will be compelled to adopt the Athlete Support Agreement.

35. NSOs will have the option of using the Athlete Support Agreement to record minimum expectations of the elite athlete and of the NSO in relation to their dealings with each other in connection with the sport:

- where no financial support is provided by the NSO to the athlete, or
- for the NSO to also provide financial benefits to the athlete, to support the athlete's pursuit of sport at an elite level.

36. The expectations of elite athletes under the Athlete Support Agreement are to be the same for all elite athletes, whether they are in receipt of financial support from the NSO or not.

37. NSOs that choose not to use the Athlete Support Agreement will be required to have some form of binding agreement in place under which athletes selected to represent Australia are bound to minimum standards in order to be eligible for some grant funding from ASC and other government entities.

Elite athletes

38. Selection of athletes to be party to Athlete Support Agreements will be at the election of NSOs, but subject to the athlete meeting minimum eligibility requirements.

39. The minimum eligibility requirements that must be met to be selected by the NSO are that the athlete:

- has either been chosen to represent Australia, or to participate in NSO-organised training programs geared toward preparing athletes to represent Australia
- is following an individual performance plan which is endorsed by their NSO
- is an Australian citizen, and eligible to represent Australia at the next Olympic, Paralympic or Commonwealth Games
- is not currently serving a sanction or provisional suspension for an anti-doping rule violation, and
- is not in breach of an NSO integrity policy, including member protection, competition manipulation and sports wagering, misuse of drugs and medicines.

Status: **legally binding**

40. In addition to those criteria, selection of athletes for financial support will be subject to considerations regarding overall funding available to the NSO and competing demands for allocation of that funding. Overall funding includes that available from Commonwealth and state government allocations, grants, philanthropic contributions, corporate sponsorships, membership fees and returns on investments.

Minimum expectations

41. The AIS and NSOs set standards and expectations for elite athletes, many of which also apply to athletes at lower levels, where athletes pay membership fees which entitle them access to insurances, facilities and rights to participate in competition, and which also impose membership terms and conditions, including codes of conduct, upon them.

42. Additional expectations exist of those athletes chosen to represent Australia, in recognition of the responsibilities of being a role model and the potential to impact upon the image of the sport itself.

43. Expectations of elite athletes chosen to represent Australia, as set out in the Athlete Support Agreement, include that the athlete:

- is able to compete at an elite or high-performance level (clause 4)
- agrees to develop themselves as an athlete and agrees to be available to attend and participate in training sessions, camps, tours, events and competitions, unless otherwise agreed in writing (clause 5(a)), and disclose illnesses and injuries that may prevent that (clause 5(b))
- have private health insurance unless agreed otherwise (clause 8)
- be bound by the NSO's code of conduct and rules (clause 4), not do anything to bring themselves or their NSO into disrepute (clause 5(e)) and abide with anti-doping policies (clause 6)
- wear prescribed uniforms, not to do anything inconsistent with their NSO's sponsorship arrangements (clause 5(d)) and abide by some approval requirements in relation to media (clause 5(f)), and
- not play, train or participate for another international team, a club or a sport, or other organisation, without prior written authorisation from the NSO (clause 12(b)).

Commissioner of Taxation
5 March 2025

Status: **not legally binding**

Appendix – Explanation

❗ ***This Explanation is provided as information to help you understand how the Commissioner's view has been reached. It does not form part of the binding public ruling.***

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Pay as you go withholding obligations

44. Under PAYG withholding, amounts are collected in respect of particular kinds of payments or transactions. As provided in section 10-1, someone who makes a payment to another is usually required to withhold an amount from the payment, and then to pay the amount to us.

45. The payments and other transactions covered by PAYG withholding are called 'withholding payments'.

46. For a payment to be subject to PAYG withholding, that payment or transaction must fall within one of the 'withholding payments' listed in the table in section 10-5.

47. Section 10-5 provides, for each type of withholding payment, the corresponding PAYG withholding provision within Division 12 that applies. PAYG withholding provisions within Division 12 outline the requirements for fulfilling withholding obligations in respect of each type of withholding payment (provided none of the general exceptions in section 12-1 applies).

48. It is considered that the only types of withholding payments that may be relevant in respect of payments from the NSOs to elite athletes are the following:

- a 'payment of salary etc to an employee' – see table item 1 of section 10-5(1) – the corresponding PAYG withholding provision for this type of withholding payment is section 12-35.
- a 'payment for a supply where the recipient of the payment does not quote its [Australian business number]' – see table item 15 of section 10-5(1) – the corresponding PAYG withholding provision for this type of withholding payment is section 12-190.

49. We note that only these types of withholding payments are examined in this Ruling.

Withholding in respect of 'payments of salary etc' to an employee

50. Under section 12-35, an entity must withhold an amount from salary, wages, commission, bonuses or allowances it pays to an individual as an employee (whether of that or another entity).

51. It is therefore necessary to consider whether financial support payments that a NSO makes to an elite athlete under an Athlete Support Agreement are paid to the athlete as an 'employee' of the NSO.

52. Taxation Ruling TR 2023/4 *Income tax and superannuation guarantee: who is an employee?* explains when an individual is an 'employee' of an entity for the purposes of section 12-35. That section imposes an obligation on a paying entity to withhold an amount from salary, wages, commission, bonuses or allowances it pays to an employee, whether or not the paying entity is the employer.

53. TR 2023/4 states that the term 'employee' is not defined in the *Taxation Administration Act 1953*. For the purposes of section 12-35, the term 'employee' has its ordinary meaning.

54. Whether a person (that is, a worker) is an employee of an entity (referred to in TR 2023/4 as the 'engaging entity') under the term's ordinary meaning is a question of fact to be determined by reference to an objective assessment of the totality of the relationship between the parties, having regard only to the legal rights and obligations which constitute that relationship.

55. To ascertain the relevant legal rights and obligations between the worker and the engaging entity, the contract of employment must be construed in accordance with the established principles of contractual interpretation. The task is to construe and characterise the contract at the time of entry into it. For the purposes of that exercise of construction, recourse may be had to events, circumstances and things external to the contract which are objective, known to the parties at the time of contracting and assist in identifying the purpose or object of the contract.

56. Where the worker and the engaging entity have comprehensively committed the terms of their relationship to a written contract and the validity of that contract has not been challenged as a sham, nor have the terms of the contract otherwise been varied, waived, discharged or the subject of an estoppel or any equitable, legal or statutory right or remedy, it is the legal rights and obligations in that contract alone that are relevant in determining whether the worker is an employee of the engaging entity.

57. In most cases, it will be self-evident whether an employer and employee, or principal and independent contractor, relationship exists. However, it is sometimes difficult to discern the true character of the relationship as the contract or contracts between the

parties may be unclear or ambiguous, or because the terms are disputed by the parties or are otherwise in apparent conflict. Because of these difficulties, the ordinary meaning of employee has been the subject of a significant amount of judicial consideration.

Who is an employee within the ordinary meaning of that expression?

58. The relationship between a worker and an engaging entity will generally be either:

- a relationship of employment, often referred to as a contract of service, or
- a principal and independent contractor relationship, referred to as a contract for services.

59. The courts have considered these relationships in a variety of legislative contexts, including income tax, industrial relations, payroll tax, vicarious liability, workers compensation and superannuation guarantee. The leading decision is *Construction, Forestry, Maritime, Mining and Energy Union v Personnel Contracting Pty Ltd* [2022] HCA 1 (*Personnel Contracting*). In that case, the majority of the High Court confirmed that in determining whether a relationship between a worker and engaging entity is one of employment, an examination of the totality of the relationship must be undertaken by reference solely to the legal rights and obligations which constitute that relationship. This examination of the established contractual relationship is undertaken through the focusing question of whether the worker is working in the business of the engaging entity.

60. The various indicia of employment that have been identified in case law remain relevant but are to be considered only in respect of the legal rights and obligations between the parties. The indicia point to whether the worker is working in the business of the engaging entity or not.

61. While no factor will be determinative, the more control the engaging entity can exercise over how, when and where the worker personally performs their work under the contract, the more likely the worker is to be an employee of the engaging entity. This is because the ability to exercise control demonstrates the subservient and dependent nature of the work of the worker to the business of the engaging entity. With the increasing usage of skilled labour and consequential reduction in supervisory functions, the importance of control lies not so much in its actual exercise, although clearly that is relevant, as in the right of the employer to exercise it.

The tests to be applied in determining if the relationship is one of employment

Serving in the engaging entity's business

62. At its core, the distinction between an employee and an independent contractor is that:

- an employee serves in the business of an employer, performing their work as a part of that business
- an independent contractor provides services to a principal's business, but the contractor does so in furthering their own business.

63. In reference to the terms of the contract between an engaging entity and worker, the focusing question through which any determination of the existence of an employment relationship will always be 'is the worker an employee in the engaging entity?' A useful approach for assessing this is to ask whether the worker is working in the business or enterprise of the engaging entity, based on the terms of the contract, having regard to the various employment indicia identified in case law.

Characterising an engaging entity's business

64. The correct characterisation of the business being carried on by the engaging entity is an essential part of determining whether the worker is working in the business of the engaging entity.

65. In *Personnel Contracting*, the High Court examined the nature of the engaging entity's (Construct) business in characterising its relationship with the worker (Mr McCourt). Kiefel CJ, Keane and Edelman JJ considered that the core of Construct's business was their promise to supply compliant labour to their customer (Hanssen):

> The right to control the provision of Mr McCourt's labour was an essential asset of that business, Mr McCourt's performance of work for, and at the direction of, Hanssen was a direct result of the deployment by Construct of this asset in the course of its ongoing relationship with its customer.

Presenting as an emanation of the business

66. Whether a worker is required under a contract to present to the public as part of the engaging entity's business is a key consideration in determining whose business they are serving in. In *Hollis v Vabu Pty Ltd* [2001] HCA 44, bicycle couriers were presented as emanations of the employer's business to the public and to those using the employer's couriers by wearing uniforms bearing the employer's logo as contractually required. This was an important factor in supporting the majority's decision that the bicycle couriers were employees.

67. However, it is important to distinguish between a worker being contractually obliged to present as part of the engaging entity's business and them merely choosing to do so to abide by a business' expectations. In *ZG Operations Australia Pty Ltd v Jamsek* [2022] HCA 2 (*ZG Operations*), the delivery drivers ordinarily wore company-branded clothing and installed tarpaulins bearing the company's logo on the trucks, but they were not contractually required to do so. As a result, the High Court held that this did not change the contractual rights which comprised the relationship between the parties.

Control and the right to control

68. An employer generally has a right to control how, where and when its employee performs their work. The importance of control in this context lies not in its actual exercise, but rather in the contractual right of the employer to exercise such control.

69. The importance of a right to control was emphasised by Kiefel CJ, Keane and Edelman JJ in *Personnel Contracting* where they stated:

> … the existence of a right of control by the putative employer over the activities of the putative employee serves to sensitise one to the subservient and dependent nature of the work of the employee, so as to assist in an assessment of whether a relationship is properly to be regarded as a contract of service rather than a contract for services.

70. Where the main operating activity of the business is the supply of labour or a service of some kind, often a critical element of the business is the need to retain control over that labour or the workers providing the service. This control will be strongly indicative of an employment relationship. In *Personnel Contracting*, the High Court found Construct retained a right of control over Mr McCourt that was more part of its business as a labour hire agency. This right to control the work of Mr McCourt was seen as a key asset of

Construct's business. The High Court found that Mr McCourt had no right to exercise any control over what work he was to do and how that work was to be carried out.

71. An employer may not always retain a right to control all aspects of how, when and where work is performed; different kinds of control may be contractually available depending on the nature of the arrangement. For example, in a casual employment arrangement, in the ordinary sense, the employee retains control over when or for how long they work because they may refuse a particular offer of work from their employer.

72. A term in a contract that purports to confer a right to control must be interpreted in the context of the broader contract and the services being provided. In *ZG Operations*, the High Court found that a clause requiring carriage of goods 'as reasonably directed' did not confer the necessary control when viewed in context. The context indicated that *ZG Operations*, the engaging entity, had a power to give directions to make deliveries, but it did not have the power to direct how they should be done.

Other rights that confer a capacity to control

73. In some cases, a broad, unfettered right to terminate a worker's contract may confer a capacity to control that worker, as the engaging entity can use the prospect of termination as a tool to control performance.

74. Similarly, a requirement that a worker indemnify an engaging entity for damages from failing to adhere to the engaging entity's instructions or directions may give the engaging entity control.

Other indicia

The ability to delegate, subcontract or assign work

75. A critical feature of an employment relationship is the personal service of the employee; the worker themselves should be serving in the engaging entity's business. As such, the existence of a right which allows a worker to delegate, subcontract or assign their work to another, qualified or otherwise, is generally to be viewed as inherently inconsistent with an employee relationship.

76. Where a worker has an entirely unfettered right to delegate, subcontract or assign their work to others, in the absence of countervailing considerations, the existence of this right will be a very strong indicator against the worker being an employee. Where the right is fettered, the degree of inconsistency between it and the other terms of the contractual relationship between the parties will reveal the degree to which the fettered right to delegate, subcontract or assign tends against a finding of employment.

77. As such, a right to delegate, subcontract or assign work, will indicate a worker is not an employee of the engaging entity, if that work is:

- not limited in scope (that is, the worker can delegate, subcontract or assign the entirety of their work to another, as opposed to only discrete tasks)
- not a sham, and
- legally capable of exercise.

Whether the worker is, however, an independent contractor, will depend upon an examination of the totality of the legal rights and obligations between the parties.

Status: **not legally binding**

'Results' contracts

78. Where the substance of a contract is to achieve a specified result, there is a strong (but not conclusive) indication that the contract is one for services. The reference to a 'result' in this context is the performance of a service by one party for another where the first-mentioned party is free to employ their own means (such as third-party labour, plant, and equipment) to achieve the contractually specified outcome. Satisfactory completion of the specified services is the 'result' for which the parties have bargained.

79. The way in which a worker is remunerated for their services, and the process through which the parties determine this remuneration, can help to identify whether a worker is being engaged to serve in an engaging entity's business or has merely contracted with that business to produce a specified result.

80. Consideration for a specified result is often a fixed sum paid on completion of the particular job as opposed to an amount paid by reference to hours worked, activities performed or a commission.

81. In contracts to produce a result, payment is often a negotiated price for the specified outcome. For example, in *Stevens v Brodribb Sawmilling Co Pty Ltd* [1986] HCA 1, payment was determined by reference to the volume of timber delivered and in *Queensland Stations Pty Ltd v Federal Commissioner of Taxation* [1945] HCA 13, it was a fixed sum per head of cattle delivered. A payment is more likely to be for a result if it bears little to no reference to the time spent working to produce the outcome.

82. However, 'piece-rate' or 'output-based' payment models are often consistent with an employment relationship if they are simply a natural means to remunerate the particular kind of task the worker is performing. Often in these cases, the employee is paid per discrete task because of one or more of the following factors:

- the sole duty of the employee is to complete the task
- it is easier to calculate remuneration based on task completion
- the amount per task is calculated by reference to the period worked or by reference to time variable (for example, effort, speed and waiting times), or
- paying per task is used as a means to increase productivity.

Provision of tools and equipment

83. The provision of assets, equipment and tools by a worker, and the incurring of expenses and other overheads, may be an indicator that the worker is an independent contractor. However, a worker bringing their own tools is not automatically inconsistent with an employment relationship. The nature, scale and cost of the tools and equipment must be considered.

84. As highlighted in *Hollis v Vabu Pty Ltd* [2001] HCA 44, the provision and maintenance of tools and equipment and payment of business expenses should be significant for the worker to be considered an independent contractor.

85. Equipment that is not specialised or inherently used only for the completion of the worker's contracted services is also less likely to be considered significant.

86. There are situations where, having regard to the custom and practice of the work, or the practical circumstances and nature of the work, very little or no tools of trade or plant and equipment are necessary to perform the work. This fact by itself will not lead to the conclusion that the worker is engaged as an employee. The weight or emphasis given to this indicator (as with all the other indicators) depends on the particular circumstances and

the context and nature of the contractual work. All the other legal rights and responsibilities must be considered to determine the nature of the contractual relationship.

Risk

87. Where the worker bears little or no risk of the costs arising out of injury or defect in carrying out their work, they are more likely to be an employee. On the other hand, an independent contractor bears the commercial risk and responsibility for any poor workmanship or injury sustained in the performance of work.

Application of these tests to the relationship between the national sporting organisations and elite athletes

88. In this case, there is a written agreement in place, being the Athlete Support Agreement. As such, the character of the relationship between the parties – the elite athletes and the NSOs – must be determined by reference to the terms of that agreement.

89. While there are variations in regard to the particular types of payments which may be made to elite athletes, and the particular sports in which they compete, the terms of the Athlete Support Agreement, particularly in regard to the athletes' obligations, are the same for all.

90. It is accepted that the elite athletes, by agreeing to the terms of the Athlete Support Agreement, are consenting to having a certain degree of control exercised over them by the relevant NSO. However, while the Athlete Support Agreement sets certain expectations and obligations of the athletes, particularly in terms of behaviour and fitness requirements, it is not considered that this represents a level of control which would be found in an employment relationship.

91. In particular, the Athlete Support Agreement requires that the participating athletes maintain certain levels of fitness, and commit to the terms of their training agreements. However, maintaining certain minimum fitness levels would seem to be a requirement of participating as an athlete, and is something that would be done even in the absence of such an agreement.

92. In addition, the Athlete Support Agreement does not go so far as to dictate to the athletes how they should maintain such fitness levels, how they should undertake their training, or what training they should do. It is not considered that this represents a level of control which would be found in an employment relationship, whereby employees are instructed as to not just what work they do, but how and when to do it.

93. It is considered that the maintaining of certain fitness levels, and undertaking the required training, is something that, while it may not benefit the elite athlete alone, is certainly done for the benefit of the athlete in the main, and not for the relevant NSO.

94. While it has been clearly contemplated that the relevant NSOs are at risk of some damage to their reputation and public image through untoward acts committed by the elite athletes, it is considered that the personal risk to the athlete themselves is greater.

95. The requirement for elite athletes to wear uniforms (while it may identify, in part, the particular NSO, and thereby provide a boost to the public image and recognition of that NSO) is not considered the main reason for the wearing of that uniform. As has been noted (though it varies in terms of identifying characteristics and public recognition), the wearing of a uniform is an almost universal requirement for competing in sport, particularly at an elite level.

96. Further, it is not generally considered that this requirement is imposed on the elite athlete by the particular NSO, but rather by the relevant international governing body of that sport, further limiting the potential for this requirement to be a form of control imposed by the putative employer.

97. While NSOs may similarly obtain an indirect benefit from elite athletes undertaking appearances on their behalf, it is not a requirement imposed by the terms of the Athlete Support Agreement itself. NSOs (and athletes representing them) would have some such obligations, in any case, to support funding arrangements, or to promote particular international competitions conducted by the international governing body.

98. It should also be noted that providing financial benefits for making public appearances is only one of 5 different types of payment potentially made to the elite athletes, and many athletes may not receive any such reward, nor make such appearances.

99. The payments under the agreement are not made specifically so that athletes can participate in the Olympics, Paralympics, Commonwealth Games or their respective world championships, even though a natural incident of the financial support provided by the payments is to enable athletes to train, recover and compete.

100. Athletes in receipt of financial support payments are required to maintain a minimum level of performance, continue to participate in international competitions and compete only for Australia. Athletes are also required to adhere to anti-doping policies and their NSO's integrity policy. We do not consider that these factors are sufficient to amount to an employer and employee relationship between an elite athlete and their NSO.

101. Having considered the tests in paragraphs 62 to 87 of this Ruling together, it is concluded that athletes do not receive the financial support payments in the capacity of employees of the various NSOs. As such, section 12-35 does not apply in respect of these payments.

Withholding in respect of payments from carrying on a business of participating in sport

102. Under section 12-190, an entity must withhold an amount from a payment it makes to another entity if the payment is for a supply that the other entity has made or proposes to make to the payer in the course or furtherance of an 'enterprise' carried on in Australia by the other entity (and where none of the exceptions in section 12-190 apply).

103. The term 'enterprise' includes a business.

104. Paragraph 9 of Taxation Ruling TR 1999/17 *Income tax: sportspeople – receipts and other benefits obtained from involvement in sport* provides that 'assessable income' includes:

> … amounts of a revenue nature or other benefits received, including prizes and awards, from carrying on a business of participating in sport. This includes the exploitation of personal skills in a commercial way for the purpose of gaining reward.

105. Paragraph 31 of TR 1999/17 states that whether an activity is a business is a matter of fact. Whether a person is carrying on a business can only be determined by considering all the relevant facts and circumstances. Similarly, as business includes the exploitation of personal skills in a commercial way for the purpose of gaining reward, it is necessary to consider all relevant facts surrounding amounts received from the pursuit of sporting excellence.

106. For the purposes of this Ruling, it is assumed that none of the athletes who receive a financial support payment under an Athlete Support Agreement are carrying on a business of participating in sport. On this basis, it is considered that section 12-190 does not apply in respect of such payments.

Conclusion – pay as you go withholding obligations

107. As there is no employment relationship between the elite athletes and the NSOs, NSOs do not have a PAYG withholding obligation under section 12-35 for payments made to athletes under an Athlete Support Agreement.

108. Based on the assumption that none of the athletes who receive a financial support payment under an Athlete Support Agreement are carrying on a business of participating in sport, NSOs do not have a PAYG withholding obligation under section 12-190 for payments made to athletes under an Athlete Support Agreement.

109. The financial support payments made to athletes are not considered to fall within any of the other types of withholding payments listed in section 10-5, such that none of the PAYG withholding provisions in Division 12 apply to these payments.

110. On this basis, NSOs do not have a PAYG withholding obligation under Division 12 for payments made to athletes under an Athlete Support Agreement.

111. As the NSOs are not required to withhold amounts from the payments made to athletes under the Athlete Support Agreement, they do not have any other associated PAYG withholding obligations – for example, obtaining tax file number declarations, providing payment summaries, or annual reporting.

Fringe benefits tax obligations

112. The definition of a 'fringe benefit' contained in subsection 136(1) of the *Fringe Benefits Tax Assessment Act 1986* (FBTAA) requires all of the following conditions to be satisfied:

- A benefit is provided at any time during the year of tax.
- The benefit is provided to an employee or an associate of the employee.
- The benefit is provided by
  - their employer, or
  - an associate of the employer, or
  - a third party other than the employer or an associate under an arrangement between the employer or associate of the employer and the third party, or
  - a third party other than the employer or an associate of the employer, if the employer or an associate of the employer
    - participates in or facilitates the provision or receipt of the benefit, or
    - participates in, facilitates or promotes a scheme or plan involving the provision of the benefit; and the employer or associate knows, or ought reasonably to know, that the employer or associate is doing so.

- The benefit is provided in respect of the employment of the employee.
- The benefit is not one that is specifically excluded as per paragraphs (f) to (s) of the definition of a 'fringe benefit' in subsection 136(1).

113. As per the definition in subsection 136(1) of the FBTAA, for a benefit to be a 'fringe benefit', it must be provided in respect of the employment of an employee (employment connection test).

114. The term 'in respect of employment' has been considered by the courts on numerous occasions. In *J & G Knowles v Commissioner of Taxation* [2000] FCA 196, the full Federal Court examined the definition of 'fringe benefit' and noted that:

> … it must be remembered that what must be established is whether there is a *sufficien*t or *material*, rather than *a*, causal connection or relationship between the benefit and the employment.

115. In this case, there is no employment relationship between the various NSOs and the athletes. The athletes are not engaged as employees and the NSOs are not employers of the athletes. As such, benefits provided to athletes under the Athlete Support Agreements are not 'in respect of employment'.

116. As all of the conditions in the definition of a 'fringe benefit' in subsection 136(1) of the FBTAA would not be satisfied in these circumstances, benefits provided to athletes would not constitute a 'fringe benefit'. Therefore, NSOs do not have any fringe benefits tax obligations in circumstances where benefits are provided to athletes under the Athlete Support Agreements.

Status: **not legally binding**

References

Related Rulings/Determinations:
TR 1999/17; TR 2023/4

Previous Rulings/Determinations:
CR 2015/19

Legislative references:
- TAA 1953 Sch 1 10-1
- TAA 1953 Sch 1 10-5
- TAA 1953 Sch 1 Div 12
- TAA 1953 Sch 1 12-1
- TAA 1953 Sch 1 12-35
- TAA 1953 Sch 1 12-190
- FBTAA 136(1)

Cases relied on:
- Stone v Commissioner of Taxation [2002] FCA 1492; 2002 ATC 5085; 51 ATR 297; 196 ALR 221
- Commissioner of Taxation (Cth) v Dixon [1952] HCA 65; 86 CLR 540; [1953] ALR 17; 10 ATD 82; 26 ALJR 505
- Construction, Forestry, Maritime, Mining and Energy Union v Personnel Contracting Pty Ltd [2022] HCA 1; 275 CLR 165; 279 FCR 631; 96 ALJR 89; 381 ALR 457
- Hollis v Vabu Pty Ltd [2001] HCA 44; 207 CLR 21; 2001 ATC 4508, 47 ATR 559; 75 ALJR 1356
- Stevens v Brodribb Sawmilling Co Pty Ltd [1986] HCA 1; 160 CLR 16; 63 ALR 513; 60 ALJR 194; [1986] ACL 36085
- Queensland Stations Pty Ltd v Federal Commissioner of Taxation [1945] HCA 13; 70 CLR 539; 8 ATD 30
- J & G Knowles v Commissioner of Taxation [2000] FCA 196; 96 FCR 402; 2000 ATC 4151, 44 ATR 22
- ZG Operations Australia Pty Ltd v Jamsek [2022] HCA 2; 275 CLR 254; 96 ALJR 144; 398 ALR 603; 312 IR 74

ATO references

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