

Tax status of the IPPP

Investigation report by Ed Zahra

Vice President, 10-6-2013

Our Treasurer's book keeper (Lea Wensley [who liaises with Judi on Treasurer Jill Scott's behalf]) has pointed out that, on 3 December 2012, the Australian Charities and Not-for-profits Commission (ACNC) was recently formed to register organisations as charities for the purpose of tax-exempt status. She also noted that there is no notation on our ABN indicating that the IPPP is tax-exempt. She indicated that our tax-exempt status appears to be unclear. To date, we have considered ourselves to be a non-profit organisation that was also tax-exempt.

What penalties apply for late lodgement?

It is important to clarify our tax status because, for a "small" organisation like the IPPP, the penalties for late lodgement of tax returns range from \$170 to \$850 for every 28 days overdue, for at least the last 5 years.

What about our Association Liability Insurance?

Our Association Liability Insurance does have a section that would cover the costs associated with an audit **IF** we have complied with our tax obligations in the past (but it will not pay any actual tax liability, or any penalties). To date, we have not had that cover included as our response to that section was "we do not pay tax". I have asked our insurance broker to amend our response to that question to read "To the best of our knowledge we do not need to pay tax" and to secure the Tax Audit Cover. This was done, at a cost of \$320, while our tax status investigations were in process.

Are we a non-profit organisation?

Information on this page

<http://www.ato.gov.au/nonprofit/content.aspx?menuid=0&doc=/content/29074.htm&page=15&H15>

indicates that **we are a non-profit organisation.**

We could reinforce our non-profit status by using, in our Constitution, the exact wording of the following two example clauses:

Non-profit clause

The assets and income of the organisation shall be applied solely in furtherance of its above-mentioned objects and no portion shall be distributed directly or indirectly to the members of the organisation except as bona fide compensation for services rendered or expenses incurred on behalf of the organisation.

Dissolution clause

In the event of the organisation being dissolved, the amount that remains after such dissolution and the satisfaction of all debts and liabilities shall be transferred to another organisation with similar purposes which is not carried on for the profit or gain of its individual members.

(A non-profit organisation can still make a profit, but this profit must be used to carry out its purposes and must not be distributed to owners, members or other private people.

Example: A society makes a \$40,000 profit for the year. It uses this profit to reduce its debts and provide for its activities in the following year.)

We have two clauses in our Constitution that are very similar to the above standard examples.

Are we a Tax-Exempt organisation?

To be tax-exempt we need to be either a “charity” or a “tax-exempt entity”. This is a “self-assessment” process.

This site <http://www.ato.gov.au/nonprofit/content.aspx?doc=/content/24483.htm> suggests that **the IPPP is not a charity.**

This site <http://www.ato.gov.au/nonprofit/content.aspx?menuid=0&doc=/content/29074.htm&page=5&H5> suggests that **the IPPP is not a tax-exempt entity.**

Has the IPPP paid income tax in the past?

No (as far as I can determine), but we do have a Tax File Number (TFN).

To have access to our tax history, we need to quote the TFN and be authorised to discuss the accounts. Currently I have no access to the TFN, nor can I be told who is an Authorised Contact Person, however, we can authorise persons on behalf of the IPPP by writing to:

Operations Registration

P O Box 3373

PENRITH NSW 2740

The letter should include:

- The name of the organisation: Institute of Private Practising Psychologists
- The ABN: 48 849 365 328
- A request to list new Authorised Contact Person(s)
- New Office Holder names and positions
- The name(s) of office holder(s) who will be an Authorised Person
- Request the removal of any previously authorised person(s)
- Their signatures (at the end of the letter)
- Their dates of birth
- Their TFN(s) – this is not essential, but helpful for identification
- Attach a copy of the AGM Minutes showing their appointment to office

Does the IPPP need to pay tax?

Yes, but only if it makes an assessable profit.

The only portion of its income that is taxable as an assessable profit is that amount over \$416 that was earned from sales to non-members. According to information from my enquiries with the ATO's Non-Profit section (Enquiry reference number 1012468191546), income from members (obtained from annual subscriptions, or for any other reason) is **not** taxable for a non-profit organisation.

Who is considered a Member?

<http://www.ato.gov.au/nonprofit/content.aspx?menuid=0&doc=/content/00246133.htm&page=13&H13>

Meaning of member

For the purposes of mutuality, we accept that a person is a member of an organisation where the person has:

- applied for membership (which may entail being nominated and paying the appropriate nomination fee)
- been accepted by the organisation (for example, by the board of directors), and
- paid the appropriate membership subscription.

Once a person has applied for membership and has been accepted by the organisation as a member, they are bound by the organisation's constitution and any rules or by-laws of the organisation.

Members need not have voting rights, but those who do not must be eligible to the other rights and privileges of membership. This would include knowing that they are a member, receiving the appropriate membership identification (for example, a card or badge) and receiving the organisation's newsletters and publications.

Various terms are used to describe members - for example, temporary, honorary, social and reciprocal members. As the meanings of these terms can differ between organisations, the use of a particular term does not determine whether a person is a member or non-member for tax purposes.

The general principle is that temporary, honorary or social members who have **not** been through the above membership process are visitors for tax purposes. This also applies to reciprocal members - that is, members of another organisation sharing reciprocal arrangements.

Non-members

A non-member is someone who is not a member of the organisation. Non-members include:

- temporary, honorary, social and reciprocal members who have not been through the above membership process and are treated as visitors
- members' guests - those visitors who accompany a member and are signed in by the member
- other visitors.

A visitor to the organisation includes anyone who is **not**:

- a member
- a child
- an employee of the organisation*
- engaged to work or provide services to the organisation.*

* This only applies while the person is on the organisation's premises in their capacity as an employee or contractor.

Has the IPPP made an assessable profit?

A review of our Audited accounts for the past 5 years indicates that, in an ordinary year, and after excluding income derived from Members, the IPPP makes an assessable loss of between \$5,000 and \$22,000 each year.

This Congress year is not an ordinary year. Without the Congress I expect the IPPP will make an assessable loss as usual. In reviewing the \$12,000 profit from the Congress on its own, I estimate that, after excluding income derived from members

(and the return of seeding moneys and other refunds), the Congress has made an assessable loss of about \$5,400. These losses will be more easily and accurately determined once the IPPP chart of accounts is set up in a way that separates member-derived income from non-member derived income.

Is the IPPP required to lodge a tax return if we have not made an assessable profit?

No. See below:

<http://www.ato.gov.au/content/00350071.htm>

[Company tax return instructions 2013](#) Page 14:

Lodging the tax return and schedules Companies that derived assessable income in the 2012–13 income year must lodge a tax return for the 2012–13 income year. Companies that are carrying forward losses that exceed \$1,000 to the 2013–14 income year must also lodge a tax return for the 2012–13 income year even if no assessable income has been derived in that income year.

Non-profit companies that are resident and have taxable income of \$416 or less do not have to lodge an income tax return, unless specifically requested. Keep records so that the information reported on the tax return can be verified at a later date, if required, see Record-keeping requirements on page 12.

How far back would the IPPP be liable to lodge an income tax return?

We are governed by Company rules. If we need to lodge tax returns, it would be for as far back as we have records, or at least (the required record-keeping period of) 5 years.

<http://www.ato.gov.au/businesses/content.aspx?menuid=0&doc=/content/76494.htm&page=6&H6>

The most important reason for keeping good records is that it is a legal requirement. By law, you must keep business records:

- for five years after they are prepared, obtained or you complete the transactions, whichever occurs latest
- in English or in a form that we can access and understand to work out the amount of tax you are liable to pay.

You will have to keep records for longer if you use information from those records in a later tax return - for example, if you claim a loss carried forward from a business activity in an earlier year. Under these circumstances, you must keep the records until the end of any period of review for that later return.

You may also need to keep [records relating to assets for capital gains tax](#) purposes for a longer period.

You can issue and store records in either paper or electronic form.

There are penalties for not maintaining the required records and for not keeping them for five years. Keeping good records will help you avoid these penalties.

Should the IPPP proceed with a Private Ruling to confirm the above findings?

The ATO non-profit organisation information line made it quite clear that this is a self-assessment process. A Private Tax Ruling may take several months and is not likely to add to the information already collected.

SUMMARY

- **The IPPP is a taxable, non-profit organisation.**
- The IPPP is not required to lodge a tax return if it does not (after excluding all income derived from Members) earn a taxable income above \$416.
- My assessment of the last 5 years of audited accounts, and this year's Congress accounts, indicates that the IPPP consistently makes a loss (after excluding all income derived from Members) of between \$5,000 and \$22,000.
- Unless we wish to carry forward our tax losses, we are not required to lodge any tax returns.
- Recommendations are listed below, on the final page of this report.

RECOMMENDATIONS

- The book-keeping chart of accounts used by the IPPP must specify income derived from members, and from non-members, as separate items
- The IPPP should submit a new list of Authorised Contact Persons for the purpose of accessing the IPPP tax records and the TFN. We can then obtain the IPPP tax history.
- The IPPP should to maintain an annual list of members. This would best be achieved as part of the Treasurer's duties.
 - It should be included in the day to day accounts with respect to the record of IPPP income received from members, and from non-members.
 - A separate Membership Register document should be generated prior to each AGM (and should include the commencement dates for each membership for that financial year).
 - It should be stored in the Membership Archive section of the main "Committee Page" of the IPPP website.
- As the IPPP does not appear to have ever made an assessable profit (even in this profitable Congress year) it does not need to lodge any tax returns, nor is there any need to carry forward losses.
- In light of the oft-mentioned ATO intentions to audit small organisations, and while we are in the process of moving to an accounting chart of accounts that separates member-derived income from non-member derived income, the IPPP may wish to continue to include Tax Audit Cover in its Association Insurance for the next 5 years.
- Our notation in the Tax Audit section of future Association Insurance documents should be listed as "Taxable, but not required to lodge as taxable income is consistently below threshold".
- The IPPP should reinforce its non-profit status by incorporating, in its Constitution, the exact wording of the two example non-profit clauses listed on page 2 of this document.
- The IPPP may delete its audited accounts after 5 years. Accounts over 5 years old, that are still available, remain subject to assessment by the ATO.