

# Newsletter Winter 2009



## Contractors – Your Obligations as an Employer

The subject of contractors has long been one of angst and confusion for business owners. There are three key areas of concern, represented by three separate governing bodies:

- ◆ **Superannuation** – Australian Taxation Office
- ◆ **Workers compensation** – WorkCover NSW
- ◆ **Payroll tax** – NSW Office of State Revenue

This brief guide is not intended to cover all scenarios (and is **intended for NSW employees/contractors only**) so please seek further advice if you are unsure of your obligations.

### Employee or independent contractor?

The main factors to consider in determining whether a worker is an employee or an independent contractor are outlined below. **No one factor is necessarily conclusive.**

#### ATTENTION:

If a worker has an ABN, this does **not** automatically mean the worker is a contractor. You still need to consider the nature of your agreement with the worker.

### Employee

Generally, a worker is an employee if they:

- ◆ are paid for time worked
- ◆ receive paid leave entitlements
- ◆ are not responsible for providing the materials or equipment required to do their job
- ◆ must perform the duties of their position
- ◆ agree to provide their personal services
- ◆ work hours set by an agreement or award
- ◆ are recognised as part and parcel of your business
- ◆ take no commercial risks and cannot make a profit or loss from the work performed.

### Independent contractor

An independent contractor is an entity (such as an individual, partnership, trust or company) that agrees to produce a designated result for an agreed price. In most cases an independent contractor:

- ◆ is paid for results achieved
- ◆ provides all or most of the necessary materials and equipment to complete the work
- ◆ is free to delegate work to other entities
- ◆ has freedom in the way the work is done
- ◆ provides services to the general public and other businesses
- ◆ is free to accept or refuse work
- ◆ is in a position to make a profit or loss.

### Superannuation

If you engage an *independent contractor wholly or principally for labour*, the contractor is deemed to be an employee for superannuation guarantee purposes. The ATO considers the following criteria as indicators that a contract is wholly or principally for labour:

- ◆ the individual is remunerated (wholly or principally) for their personal labour and skills;
- ◆ the individual must perform the contractual work personally (there is no right of delegation); and
- ◆ the individual is not paid to achieve a result.

Superannuation only applies for employees/contractors who are **individuals**. However, if you pay a company, partnership or trust for the services of the worker but you think your work agreement is with the individual worker, you may still have an obligation.

### Workers Compensation Insurance – NSW

Employers within NSW pay workers compensation premiums for “Workers”. The tests to distinguish between a Worker and a Contractor are similar to the tests for Employee and Independent Contractor above.

However, in some circumstances where a contractor is under your **direction and control**, the **contractor may be deemed as a ‘Worker’** in industries such as labour hire, outworkers, salespersons, canvassers and collectors, rural workers, timber getters, mine employees, boxers, wrestlers, referees and entertainers. For more info go to [www.workcover.nsw.gov.au/workerscompensation/](http://www.workcover.nsw.gov.au/workerscompensation/)

### Payroll Tax – NSW

The labour content of all contracts is liable for payroll tax unless the contracts are **specifically exempted** by the payroll tax provisions. **Where the contract worker is a person**, and the contract is entered into with that person, it is necessary to **determine if the worker is an employee or contractor before applying the relevant contract provisions.**

There are **nine types of exempt contractors**. More information can be found at [www.osr.nsw.gov.au/taxes/payroll/general/contractors/exemptions/](http://www.osr.nsw.gov.au/taxes/payroll/general/contractors/exemptions/)

For assessable contractors, **GST is excluded**. Also, where a contract includes payment for materials provided by the worker which are **not separately invoiced**, the Chief Commissioner provides standard labour content percentages for various trades that can be used **providing the worker clearly provided the materials.**



## Life and Taxes

### Federal Budget Update

#### **Investment Allowance: small business and general business tax break**

The Government has announced that the one-off bonus tax deduction available to small businesses under the Small Business and General Business Tax Break will increase to **50%**, where a small business acquires an eligible asset between 13 December 2008 and 31 December 2009, and the asset is installed or ready for use by **31 December 2010**.

**Other businesses (turnover >\$2m)** retain the previously announced concessions:

Asset Acquired	Asset installed by	Bonus Deduction
13 Dec 08 to 30 Jun 09	30 Jun 10	30%
13 Dec 08 to 30 Jun 09	1 Jul 10 to 31 Dec 10	10%
1 Jul 09 to 31 Dec 09	31 Dec 10	10%

**Eligible assets** are new, tangible, depreciating assets costing \$1,000 or more for small businesses (or \$10,000 or more for other businesses). For more information go to [www.ato.gov.au/taxprofessionals/content.asp?doc=/Content/00175431.htm](http://www.ato.gov.au/taxprofessionals/content.asp?doc=/Content/00175431.htm)

#### **Changes to concessional superannuation contributions cap**

The Government will cut the superannuation concessional (i.e. tax-deductible) contributions cap to **\$25,000\*** per annum (down from \$50,000 per annum) from **1 July 2009**.

The transitional concessional contributions cap, which applies until the **2011/12** income year, for individuals **aged 50 to 74**, will be reduced to **\$50,000\* per annum** (down from \$100,000 per annum).

The Government has not amended the non-concessional (i.e. non tax-deductible) contributions cap of **\$150,000** per annum.

**\*Note that employer 9% contributions count towards these limits!!**

#### **Foreign employment income**

Until recently, taxpayers who undertook at least 91 days continuous employment overseas received an exemption from paying tax on that income in Australia. Effective from **1 July 2009**, this income will be taxed in Australia with a **foreign tax credit available for any tax paid overseas**.

Those people who plan on working overseas while remaining a **resident of Australia** for tax purposes (generally those who are intending on being out of the country for less than 2 years) will now pay Australian rates of tax on those foreign earnings.

#### **Employee share schemes**

The Government has announced that discounts (valued at more than \$5,000) on shares and options provided under an employee share scheme, whether qualifying or non-qualifying, **will be assessed in the income year in which they are acquired**. That is, employees will no longer be able to elect to defer taxation on their discount to a later time, unless the value is **\$5,000 or less**, or there is a **genuine risk of forfeiture**.

The Government will also limit access to the **\$1,000 upfront tax exemption** to employees with an adjusted taxable income of less than **\$180,000**.

These measures are proposed to apply to shares and options acquired on or after **1 July 2009**. **The relevant legislation has not yet been passed.**

#### **Private health insurance rebate**

The Government announced that high income earners will receive a reduction in their private health insurance rebate and face an increase in Medicare levy surcharge should they opt out of their health cover. **The relevant legislation has not yet been passed and the Opposition announced that it intends to fight this Budget measure to the last.**

Singles earning less than \$75,001 (couples/families \$150,001) will be unaffected by the proposed changes.

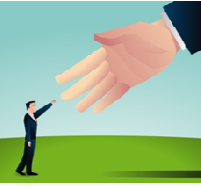
#### **Superannuation co-contribution**

The Government will temporarily reduce the superannuation government co-contribution matching rate that is payable on eligible personal superannuation contributions, with effect from **1 July 2009**. The temporary matching rates are:

- ◆ for the 2009/10, 2010/11 and 2011/12 income years, \$1 for each dollar of contribution, up to a maximum of \$1,000 per annum;
- ◆ for the 2012/13 and 2013/14 income years, the rate is \$1.25 for each dollar of contribution, up to a maximum of \$1,250 per annum; and
- ◆ for 2014/15 and later income years, the rate is \$1.50 for each dollar of contribution, up to a maximum of \$1,500 per annum.

#### **Reduction in pension drawdown**

The Government will extend its decision to reduce by 50% the minimum annual payment amounts for account-based pensions for the 2009/10 income year. That is, **self-funded retirees will only have to draw down half of the minimum amounts from their account-based pensions for 2009/10.**



## Insurance Brokers - Who Needs Them?

**When is it appropriate to use an insurance broker and how much does it cost? We spoke to Grant Lewthwaite at Coverforce to learn more.**

### **Grant, what does an insurance broker do?**

An insurance broker acts as an intermediary between you (the Insured) and the "Insurer". The broker acts as an "agent" on your behalf and arranges insurance with various insurance companies tailored to your individual risk circumstances.

### **Who can use an insurance broker?**

Anyone can use an insurance broker, irrespective of the type of risk to be insured. Insurance can broadly be split into three categories:

- ◆ Life and Employee Benefits (life, salary continuance, superannuation etc)
- ◆ General Insurance (corporate/business) and
- ◆ Domestic insurance (home, contents, car, caravan etc).

Duly licensed and qualified insurance brokers are able to transact on any of the above.

### **What types of insurances does a broker offer?**

An insurance broker will typically specialise towards a certain industry or market, offering a range of services to that particular clientele. Insurance broker services range from individual product to multi product solutions with a range of ancillary services in support of those product lines. It is usually advisable to consider a broker with the capability to transact business across the three broad categories noted above. A typical cross section of products would include:

- ◆ Home and Contents insurance,
- ◆ Landlord's insurance,
- ◆ Business insurance,
- ◆ Public Liability insurance, (PL)
- ◆ Industrial Special Risks insurance, (ISR)
- ◆ Directors and Officers insurance, (D&O)
- ◆ Management Liability insurance, (MLI)
- ◆ Professional Indemnity insurance, (PI)
- ◆ Motor insurance,
- ◆ Marine and Transit insurance,
- ◆ Trade Credit insurance (including, where appropriate, Political Risks insurance),
- ◆ Workers Compensation insurance.

### **What are the advantages of using an insurance broker?**

In short, a broker can **save you time and money but, more importantly, can take a great deal of angst and frustration out of your life.** As your advocate, a duly licensed broker has access to all local Australian insurance markets and, if appropriate, access to international markets. **A broker should ideally be an integral part of your business and should be viewed in the same light as your accountant, lawyer or other professional service provider.** Given the complexity that surrounds the vast range of insurance company product offerings, without the services of a competent broker, you the Insured will be at a huge disadvantage.

### **What are the costs of using an insurance broker?**

Utilising the services of an insurance broker **will not cost you more.** In fact, to the contrary, the use of a broker should result in a combination of both premium stability and tailored product coverage. **An insurance broker is generally remunerated by way of a commission, payable by the insurer.** Larger, more sophisticated, buyers might elect to pay their broker a "Fee", with all premiums being charged net of any commission.

### **What services other than insurance policies can a broker provide?**

Besides pure insurance advice and support your insurance broker should be able to provide the following services:

- ◆ Risk identification and assessment – typically within the framework of AS4360, the Australian Standard for Risk Management;
- ◆ Financial Risk analysis, Forensic review, Hedging strategies and the like;
- ◆ Claims administration and support;
- ◆ Third Party claims recovery;
- ◆ Non conventional insurance strategies such as Alternative Risk Transfer and Alternative Risk Funding; and
- ◆ Premium Finance.

**For further information please contact Grant Lewthwaite at Coverforce on 1-3000-COVER**

## Our Staff



Congratulations to Annette Sokolnikoff on achieving 10 years of service with us. Annette continues to make a valuable contribution to our firm and specialises in Business Advisory and Salary Packaging.

Welcome to Angela Yu, a qualified Chartered Accountant who recently joined our audit team.



## Payroll Matters

### Superannuation - Ordinary Time Earnings

The Tax Office has issued its latest ruling on what constitutes ordinary time earnings (OTE) for superannuation contribution purposes. Superannuation Guarantee Ruling **SGR 2009/2** takes effect from **1 July 2009**. Of particular note: **payment in lieu of notice** and **Christmas bonuses** are now included in OTE. A copy of the ruling can be accessed at <http://law.ato.gov.au/atolaw/view.htm?docid=SGR/SGR20092/NAT/ATO/00001>

### Payroll Checklist for Year End

A year-end payroll checklist is available in the *Reading Room* of our website under *Useful Tools*.

### Reportable Employer Superannuation Contributions (RESC)

From **1 July 2009** employers will be required to record and display on **employee payment summaries** certain contributions to superannuation.

An RESC will only arise where the amount is above that legally required **and** the employee could influence the amount (e.g. **salary sacrifice arrangements**).

An employee's RESC will be taken into account in determining their eligibility or liability for child support, HELP and SFSS repayments, family allowances, Medicare levy surcharge and the government superannuation co-contribution.



## BAS Payment Assistance for Small Businesses

### Twelve-month general interest charge (GIC) free payment arrangements

Businesses with an annual turnover of less than \$2 million and an activity statement debt can apply for a GIC-free payment arrangement from now until 30 June 2010. GIC will be remitted for a **maximum period of 12 months**, provided the payment arrangement is maintained. There is no limit on the amount of debt under arrangement, although it is limited to activity statement debt only.

#### Who is eligible?

To be eligible a business must:

- ◆ have an annual turnover of **less than \$2 million**
- ◆ have an **activity statement debt**, and
- ◆ negotiate a mutually acceptable and sustainable **payment arrangement** with the Tax Office that is entered into between **1 June 2009** and **30 June 2010**.

#### Tip:

If a payment arrangement entered into prior to 1 June 2009 is renegotiated after 1 June 2009, the new arrangement will be treated as a GIC-free payment arrangement subject to the eligibility criteria being satisfied.

### Deferred activity statement payment due dates

Small businesses can also **request a deferral** of payment on their next activity statement. Businesses with short-term cash flow problems that pay **quarterly and annually** may be granted a deferral of **up to two months**, with those that pay **monthly** eligible for **up to one month**. **Activity statements still have to be lodged on time**; however, no GIC applies for the period of the deferral.

#### Who is eligible?

To be eligible a business must:

- ◆ have an annual turnover of **less than \$2 million**,
- ◆ have an activity statement that is required to be lodged but is not yet lodged, and
- ◆ **make the payment deferral request on or before the original due date.**

Eligible activity statements include:

- ◆ monthly – May 2009 to June 2010 (inclusive),
- ◆ quarterly – June 2009 to June 2010, and
- ◆ annual – 2008-09.

For more information please contact our office or go to [www.ato.gov.au/corporate/content.asp?doc=/Content/00196536.htm](http://www.ato.gov.au/corporate/content.asp?doc=/Content/00196536.htm)

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