

Independent Contractor or Employee and the new Contractor Payments Reporting System

The current government has expressed concern that people are becoming independent contractors instead of employees and that this is leading to less influence from the Australian Taxation Office (ATO).

The ATO's concern is of course in respect of the possible loss of revenue collection through less tax receipts. The ATO has announced that one of their target industries is the building trade.

Starting July 1, 2012 the ATO will now require members of the Building Industry to disclose all payments that have been made to contractors and sub-contractors. This means that Builders and Electricians will need to report to the government the names and ABN's of all of the contractors that they use, and how much each contractor was paid. The tax office will then match this information with the tax returns of each contractor to ensure that:

- every contractor has disclosed all income that they have received for the year on their tax return
- no contractor has earned more than 80% of their income from a single source.

However the catch here for you, the employer / head contractor, is whether you have classified your contractors correctly or whether they are in fact employees.

There are a number of factors to consider with the Contractor versus Employee scenario however the ATO has two key comments:

- “an independent contractor typically contracts to achieve a result, whereas an employee contracts to provide their labour (typically to enable the employer to achieve a result)”

- “a key factor in deciding if a worker is an employee is the degree of control that can be exercised over the worker. If the payer has the right to direct how, when, where and who is to perform the work, the worker is likely to be an employee”
- there are a number of other factors to consider including the ability to sub-contract, basis of payment, equipment used, independence of worker

There is an ATO employee / contractor decision tool located on the web at:

<http://www.ato.gov.au/content/00095062.htm?alias=employeecontractor>

This is an anonymous report that can be your starting point for the determination of your worker classification.

So what does this all mean?

You are not expected to know the intricacies of the legislation and this is where it is important to seek advice or support from your accountant or legal advisor as incorrectly classifying employees as contractors can result in significant penalties from the ATO and under the Fair Work Act.

Your legal and tax responsibilities to your employees are very different from your obligations to your contractors.

Review your existing agreements and determine the appropriateness of the classification of each worker.

In the next edition we will explore further the myths and responsibilities following the determination of your worker as a Contractor or Employee and what you need to do as the Payer.