



**REPORTS**

**SEPTEMBER/OCTOBER 2005**

**1. BUSINESS TOPIC**

**PAYG Withholding - What determines whether an employee is an employee or a contractor?**

In a recent case *Bridges Financial Services Pty Ltd v Commissioner of State Revenue*, a stockbroker paid brokerage and commission for transactions initiated by their representatives. The court held that these representatives were independent contractors and not employees and therefore payroll tax was not payable on payments to these independent contractors. Whether an individual is an employee or a contractor is also relevant for PAYG Withholding.

Taxation Ruling TR 2005/16 provides some guidance as to whether an employee is an employee or a contractor. Section 12-35 of Schedule 1 to the TAA 1953 provides that: **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).**

The relationship between an employer and employee is a contractual one. It is often referred to as a *contract of service*. Such a relationship is typically contrasted with the principal/independent **contractor** relationship that is referred to as a *contract for services*. 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).

Even though there may be a clause in the contract indicating that the individual is an employee or contractor. This will be ineffective if the facts indicate that the contract is not true.

**Indicators of whether an individual is an employee or a contractor**

**1. Control** The classic 'test' for determining the nature of the relationship between a person who engages another to perform work and the person so engaged is the degree of control which the former can exercise over the latter. An employee is told not only what work is to be done, but how and where it is to be done.

**2. Does the worker operate on their own account or in the business of the payer?**

**3. Results' contracts** - Where the substance of a contract is to achieve a specified result, there is an indication that the contract is one for services (contractor). This





means the performance of a service is by one party for another where the first party is free to employ their own means (such as third party labour, plant and equipment) to achieve the contractually specified outcome. In contracts to produce a result, payment is often made for a negotiated contract price, as opposed to an hourly rate. For example, in *Stevens v. Brodribb*, payment was determined by reference to the volume of timber delivered, and in *Queensland Stations* where it was a fixed sum per head of cattle delivered.

**4. Whether the work can be delegated or subcontracted.** If a person is contractually required to personally perform the work, this is an indication that the person is an employee.

**5. Risk** - Where the worker bears little or no risk of the costs arising out of injury or defect in carrying out their work, he or she is more likely to be an employee.

**6. Provision of tools and equipment and payment of business expenses** The provision of assets, equipment and tools by an individual and the incurring of expenses and other overheads is an indicator that the individual is an independent contractor.

#### *GST Issues for the Contractor*

Where the firm recruits an independent **contractor** for the user, the independent **contractor**, if registered or required to be registered, will be responsible to pay the **GST** on the taxable supply to the user.

## **2. INDIVIDUAL TOPIC**

### *30% child care rebate – for Next year Tax Return (2006) Parents should keep all receipts for childcare paid in the current year.*

This bill is before parliament. The rebate will cover 30% of out-of-pocket child care expenses for approved child care, up to a maximum of \$4,000 per child.

To claim the rebate the individual

- must receive the Child Care Benefit (CCB),
- be eligible for the work/training/study test (or be otherwise eligible for up to 50 hours of CCB per week and
- use approved child care.

Out of pocket expenses are total child-care fees for approved care, less actual CCB entitlement. Those that are eligible (subject to the passing of the legislation), will need





to keep receipts or child-care records as well as the letter from the Family Assistance Office confirming their CCB entitlement. The correct amount of out-of-pocket child care expenses can only be calculated once the final reconciliation of CCB is completed. The 30 per cent Rebate will be claimed on the succeeding year's tax return. This means that the Rebate entitlement for the 2004-05 year will be claimed in the return for the 2005-06 year.

### **3. SUPERANNUATION TOPIC**

Abolition of Superannuation Surcharge given royal assent. The 15% Superannuation Surcharge has been abolished as announced in the current year's federal budget. This is an additional 15% tax on superannuation contributions for high income earners. This was given royal assent 12 August 2005.

### **4. ECONOMY**

The indicators of the economy appear good. Although there has been slight reduction in economic activity the economy appears to be in good form generally. Business investment has been stronger than recently. There has been growth in the retail sector. Economists forecast the interest rates to remain the same for the moment. The drought has re-appeared. Inflation is at 2- 2 and half %. High petrol prices may cause *inflationary pressure in the future*. However, there are falling prices in some sectors.

