



Level 1
Suite 5, 796 High Street
Kew East, Vic, 3102

Tel: (03) 9859 8555
Fax: (03) 9859 8777

www.vantagetbs.com.au
info@vantagetbs.com.au

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Contractors: Is the ATO likely to deem them employees?

Dear Client,

If you engage or intend to engage subcontractors in your business, then what we have provided below is essential reading, which in most circumstances will require some action to be taken sooner rather than later. There has been more scrutiny from the Tax Office in recent months to make a distinction between **'independent contractors'** and **'employees.'** Employers who incorrectly treat a worker as an independent contractor risk facing severe penalties should in fact they be deemed an employee.

The issue surrounds the Tax Office's view about what a genuine subcontractor actually is. The majority of Businesses are of the notion that if the worker provides an ABN, then they are automatically a contractor. Unfortunately, this is not the case and should the Tax Office deem the worker to be an employee, the consequences are severe and costly. They will require you to pay PAYG, Superannuation and even leave entitlements from the date of first employment. We have evidenced this first hand at a recent audit and various in depth discussions with the ATO auditors.

Further changes are also earmarked, that will see company directors becoming personally liable for PAYG & Superannuation obligations.

Therefore it is imperative, that you determine if your ABN workers are legitimate contractors or more likely to be deemed employees. If an unfavourable determination was made by the ATO about your subcontractors, this will amount to thousands of dollars in tax and superannuation alone and could force your business into liquidation and the director's into bankruptcy.

A starting point for all our clients is to go to the following link and take the time to go through the ATO decision tool to determine each of your workers status.

<http://www.ato.gov.au/content/00095062.htm>

If they are deemed to be a contractor then on face value you shouldn't have a problem, although please keep in mind superannuation is still payable if you pay your contractors under a contract that is wholly or principally for labour – [See below link](#)

<http://www.ato.gov.au/businesses/content.aspx?doc=/content/19159.htm>

However should it display that they are in fact an employee then you need to act now by calling our office and discussing your options.

Obviously the simplest course of action would be to convert all those contractors that are deemed employees by the ATO tool, to employee status, although we have found that this is not necessarily the favoured option of contractors.

Again, we cannot reiterate how important this is for your business to ensure it is complying with what the ATO are certainly paying more and more attention to.

Please feel free to give our office a call to discuss any of the above or should your workers require guidance or assistance in setting up some form of structure. We will be providing a special discounted rate for this service.

Kind Regards

VANTAGE – Tax & Business Services

Disclaimer

The material and contents provided in this publication are informative in nature only. It is not intended to be advice and you should not act specifically on the basis of this information alone. If expert assistance is required, professional advice should be obtained.