

## CONTRACTOR OR EMPLOYEE SERVICES (SHAM CONTRACTING)

**Contractors and those who engage Contractors are being audited by the ATO and the Fair Work Ombudsman.**

The Fair Work Ombudsman (FWO) and the Australian Taxation Office (ATO) are taking steps to identify and minimise employers entering sham contracting arrangements.

The FWO audits employers in sectors at risk of breaching sham contracting provisions. The ATO collects and examines data enabling them to understand how businesses are using contractors and how contractors are engaging in the taxation system.

ATO is focusing on contractor payments, some contractors are either unaware of their tax obligations, or deliberately under-reporting them. There is a new requirement for contractors in the building and construction industries to report to the ATO on payments made to contractors, along with their ABN. This new reporting regime will allow data-matching to provide information for review and targeted audits.

Employers may face civil penalties of up to \$51,000 per offence if prosecuted. Persons entering into sham contracting may also be held accountable if involved in the breach, they will be liable for ATO penalties as set out below. Further, employers can be held liable for tax fraud implications.

- *Pay As You Go (PAYG) withholding penalty for not meeting your PAYG withholding obligations, which in the most serious cases can be as high as 100% of the amount that should have been withheld*
- *Super Guarantee Charge for not meeting your super obligations, made up of super guarantee shortfall amounts (amount of super contributions which should have been paid into a complying fund) interest an administration fee*

**We can support your business by:**

- ✓ review your arrangements with “independent contractors” and determine if they are genuine or not
- ✓ assess if you are an independent contractor working in your own business
- ✓ determine if you are at risk of penalties from both Fair Work and the ATO
- ✓ determine if your income is at risk of being assessed as “personal services income” – loss of deductions and becomes income assessed in your return
- ✓ provide assistance in preparing contractor agreements that reflect the true nature of the arrangement
- ✓ help detail additional costs if your contractors are ruled to be “employees” – such as superannuation, leave entitlements, rates of pay and conditions determined under modern awards, workers compensation insurance, amongst others

### **CONTACT US FOR AN OBLIGATION FREE DISCUSSION**

**At no cost to you, we will scope your requirements and provide you with a quotation for the required services. We will only proceed to provide the services upon receipt of an agreed and signed scope of services agreement.**



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## **FINES AND PENALTIES**

A security business breached workplace laws by failing to co-operate with inspectors investigating sham contracting allegations and legal proceedings have commenced. Failure to comply can result in a \$51,000 (corporation) or \$10,200 (individual) fine in itself (as at January 2015).

Fruit company fined \$166,848 and part-owner fined \$27,808 for a sham contracting arrangement. In addition to the fines the business was found liable to pay to the employee more than \$60,000.

Just because a worker has an ABN or provides an invoice for payment does not necessarily make them an independent contractor.

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