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EMPLOYEE OR CONTRACTOR?

In a recent speech to the Council of Small Business of Australia, the Tax Commissioner commented that of the 1,100 audits conducted by the ATO on businesses it suspected of incorrectly treating employees as contractors, 48% had "got it wrong".

The main factors to consider in determining whether a person is an employee or contractor are:

- Can the worker sub-contract or delegate the work?
- The basis of payment – the same every week? On a piecemeal basis or a quoted price?
- Does the worker provide their own tools?
- Who bears the commercial risk? Is the worker responsible for the cost of rectifying defects?
- Who controls the work?
- Independence – can the worker accept or refuse additional work from other sources?

Many businesses and contractors assume they are classified as contractors simply because that is what their contract says. On numerous occasions the ATO has successfully argued that these relationships were employee and employer, not independent contractors. The result is that the businesses involved were liable for not only (non-tax-deductible) superannuation guarantee payments but also for workers compensation and a number of other employment related taxes, plus penalties.

This area is part of the ATOs compliance program for 2012/2013; it is too expensive to get it wrong. Talk to your rdl advisor about how we can help.

Developing your export market?

Did you know that if you are developing your export market and have spent at least $20,000 over the last 2 years, the Government will reimburse up to 50% of your expenses above $10,000?

The Export Market Development Grant (EMDG) is available to eligible businesses with incomes less than $50 million. If your business and business activities are eligible, you can access up to seven grants in the year.

The grant covers the export of goods and services, inbound tourism, export of intellectual property or know how, and conferences and events held in Australia

Applications for the 2011/2012 grant year opened on 1 July, 2012 and close 30 November, 2012. Chances are, you are already doing some of these things – why not let the Government help support your efforts? Let us know if you want us to help you assess your eligibility and access the EMDG.

by Joel Hernandez
Joel is a Director and specialises in Taxation & Business Services

ACNC carve out for "Basic Religious Charities"

The establishment of the Australian Charities and Not-for-Profits Commission (ACNC) was initially proposed in the May 2011 budget. Since then Treasury has released a discussion paper, draft legislation and consulted the community widely. At the time of writing, two important bills were before Parliament with the intention to establish the ACNC before its intended start date of 1 October 2012. However due to delays in the Senate the ACNC commencement date has again been delayed. The bills are not expected to be debated until 9-11th October.

As a result of the community consultation, the drafts before Parliament include a significant concession for "Basic Religious Charities" exempting them from preparing Financial Reports.

Under the draft a basic religious charity is:

- Registered as a charity for the advancement of religion
- Not an Incorporated Association
- Not a Company
- Not a significant deductible gift recipient*
- Not a recipient Government Grants in excess of $100,000 in the current or last two financial years.
- Not part of an ACNC Reporting Group

* Total revenue from deductible gift recipient (DGR) funds of less than $250,000 is considered insignificant. Once revenue exceeds $250,000 the charity would need to establish a separate entity for the DGR in order to maintain basic religious charity status.

Refer to our website for the latest NFP developments and how they might affect your organisation, or speak to Claire Harris. When the law is settled we will be running briefings for clients and other interested parties.

Victorian Associations Incorporation Reform Act

From November 2012 the Associations Incorporation Reform Act 2012 will replace the current Incorporated Associations Act 1981 (Victoria). Key changes include a new tiered reporting system, where formal audits will not be required unless income exceeds $1m. Other changes include the requirement to indemnify Committee or Board Members, and additional duties for Committee or Board Members and other officers of the association.

All associations will be contacted in writing about the new changes so it is wise to ensure that your contact details are up-to-date with Consumer Affairs.

New ATO Guide for Not-For-Profit Organisations (NFPs)

The ATO has released an updated version of its income tax guide for NFPs, including a new worksheet to help NFPs work out their income tax status. The Guide is only available online; a link is available from the rdl website.

by Claire Harris
Claire is Senior Manager and a Not for Profit specialist

RATE CUTS NOT ALWAYS GOOD FOR INVESTORS

Over recent months we have seen the Reserve Bank of Australia cut official interest rates by 0.75% to 3.5% with further rate cuts likely. Home-loan borrowers might welcome that, but to depositors and income-oriented investors, that is not such welcome news.

However, as banks compete for deposits to fund home lending – in the light of difficult wholesale funding market conditions – term deposits can still give attractive returns. Deposit rates are not as juicy as they were in late 2009, but at around 5% for a 60-month term, they make a reasonable case for using term deposits as an investment.

For higher rates, investors can look at the corporate debt issues and hybrid securities (so called because they show some of the characteristics of debt and some of equity) listed on the Australian Securities Exchange (ASX), in fixed-rate and floating-rate (paying a margin over bank bills) form. A diversified combination of term deposits and listed interest-bearing securities can deliver a portfolio yield higher than just relying on term deposits, for slightly higher risk.

Nor should investors forget shares: many S&P/ASX 200 companies are offering dividend yields in the 5–6 per cent range, which grosses-up to 7.1–8.6 per cent. Even higher effective yields result from holding these shares in self-managed super funds, where the tax rate is 15% (or 0% in pension-paying mode), because of the refund of franking credits not needed to offset the tax on the dividends.

by Fraser Holt
Fraser is a Director primarily consulting as a Financial Planning Adviser and a Chartered Accountant

Did you know?

36,270 new Self Managed Superannuation Funds (SMSF) were established between 1 July 2011 and 30 June 2012.

As at 30 June 2012, there were 478,263 SMSFs holding $438,995,000 in assets.

The median assets per SMSF as at 30 June 2011 was $539,486 (the average was $963,002).

Australians are increasingly taking control over their retirement savings. How about you? Talk to us about how a SMSF can work for you.

"Criticism may not be agreeable, but it is necessary. It fulfills the same function as pain in the human body. It calls attention to an unhealthy state of things."

— Winston Churchill

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