

## **Employer Obligations Compliance Audit**

We refer to the letter from the ATO dated 21 January 2011 in relation to the completion of the employer obligations audit.

During the course of the audit the ATO submitted that up to 13 of your contractors were employees. We argued that all were contractors but ultimately had to concede that 6 contractors listed in the letter could be regarded as employees. The ATO in these circumstances is entitled to impose PAYG withholding and superannuation obligations in relation to the payments to these employees and undertook to do so for the period from 1 July 2008 to 30 June 2010.

However we successfully argued that the taxpayer had a good compliant history, was currently employing other workers and complying with all requirements. Accordingly the ATO have only imposed superannuation guarantee amounts totalling \$13,000 rather than \$103,632. The amount payable is set out in the attached Superannuation Account Statement dated 20 January 2011.

In relation to the 6 contractors the ATO have identified as employees, we note that Number 1 is currently an employee Number 2 is now operating through a trust and Numbers 3,4 and 5 are no longer working for your business. Number 6 however is still working for you.

Whilst we understand that you have been contributing superannuation for Number 6 we advise that he should now be added as a casual employee. A Tax File Number declaration should be completed and tax be withheld from future payments. His rate of pay should be adjusted accordingly.

As discussed with you throughout the audit we will be preparing a checklist for future workers that insist they can operate via an ABN. This checklist should be completed and reviewed by us for approval. This will also prompt you to check that the ABN is valid and that they have a valid licence and appropriate insurance.

In addition, as discussed with you, we voluntarily disclosed to the ATO a discrepancy with your calculation of Super Guarantee for holiday and sick pay for current employees. The auditor agreed not to include this as part of the audit as long as the underpayment was made good as soon as possible. I have attached a list of employees and the amount payable for this purpose.

In summary, whilst the ordeal of the audit was certainly unpleasant, the result obtained would be considered favourable given the maximum amounts that could have been payable. It has also given us the opportunity to review the payroll and contractor function in detail and give us certainty as to the ATO's expectations within this regard and to enable compliance in the future.