

Document 1: Letter received by the self-employed accountant from the ATO asserting employment status



Australian Government
Australian Taxation Office

Reply to: PO Box 3100
PENRITH NSW 2740

For your information Personal Superannuation Contribution Deduction

Dear [REDACTED]

We refer to the deduction for personal superannuation contributions claimed on your 2007-08 income tax return.

You are only able to claim a deduction for personal contributions you made to a superannuation fund in the 2007-08 income year if certain conditions have been met.

You are considered to be engaged in an employment activity if you are engaged in an activity that results in you being treated as an employee for the purposes of the *Superannuation Guarantee (Administration) Act 1992 (SGAA)*. This may be as a common law employee or an employee under the extended definition provided in section 12 of SGAA.

For an employee to be able to claim a deduction for personal superannuation contributions you need to satisfy the 10% rule. This means that less than 10% of your total assessable income and reportable fringe benefits is attributable to employment activity.

You have included personal services income in your 2007-08 income tax return. In relation to this income you have reported that you did not satisfy the results test and indicated that you earned 80% or more of your income from one source. Therefore it is considered that you are engaged in employment activity that results in you being treated as an employee for the purposes of SGAA.

In your case, the income you earned as an employee from these activities was \$[REDACTED] which is more than 10% of your total assessable income and reportable fringe benefits for the [REDACTED] income year. Therefore, you are not eligible to claim a deduction for personal superannuation contributions.

Your income tax return for the [REDACTED] year was amended as a result of information obtained, and will be adjusted to exclude the deduction for personal superannuation contributions.

If you have previously notified your superannuation fund of your intention to claim a deduction for your personal superannuation contribution you may wish to give your superannuation fund written notice advising that you are not entitled to claim this deduction so that their records may be amended according to the fund's rules.

More information

If you have any questions, please phone [REDACTED] between 8.00am and 5.00pm, Monday to Friday, and ask for [REDACTED] on extension [REDACTED]

When you phone us, please have your tax file number ready so we can quickly access your case details.

Protecting your privacy when you phone us

If you phone us we need to know that we are talking to the correct person before discussing your personal or business tax affairs. We will ask for details that only you or your authorised representative would know.

Yours sincerely

Neil Olesen
Deputy Commissioner of Taxation



Document 2: Tax bill the ATO sent to the self-employed accountant



Australian Government
Australian Taxation Office

[Redacted]

Statement period [Redacted]
Tax file number [Redacted]
Date of issue [Redacted]
Statement number 1
Our reference [Redacted]
Account enquiries: 13 28 66
Internet: www.ato.gov.au

Income Tax Account Statement of Account

| | |
|--|------------|
| Overdue amount You are required to pay this amount immediately General Interest Charge (GIC) may be accruing | [Redacted] |
| Total account balance as at 24 September 2010 (including overdue amount) | [Redacted] |

This statement has been issued to provide supplementary account information in relation to your assessment.

| Summary of account balance by tax roles | Balance \$ |
|---|------------|
| Income Tax - Individual | [Redacted] |
| TOTAL | [Redacted] |

Paul Duffus
Deputy Commissioner of Taxation

Please see over for important information about your statement

Australian Taxation Office

PAYMENT SLIP - 21

TFN [Redacted]

Amount paid \$ [Redacted]

Australian Taxation Office
Locked Bag 1936
ALBURY NSW 1936

[Redacted]

[Redacted]

Document 3: Reply from self-employed accountant to the ATO

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

The Deputy Commissioner of Taxation
[REDACTED]
[REDACTED]

[REDACTED]

Re. Notice of amended assessment [REDACTED]
[REDACTED]

Dear Sir/Madam

I acknowledge receipt of your Notice of amended assessment dated [REDACTED] [REDACTED] for an outstanding balance of [REDACTED] and for which payment is required by [REDACTED]. I have also received a letter from your Officer [REDACTED] [REDACTED] informing that I am not eligible to claim the personal superannuation contribution of [REDACTED] claimed in my 2007-08 income tax return.

I respectfully object against the Notice of amended assessment pursuant to the Taxation Administration Act 1953 ("TAA 1953") Part IVC Section 14ZL, to the Commissioner of Taxation issuing the said assessment under the Income Tax Assessment Act 1936 and Income Tax Assessment Act 1997 for the year ended 30 June 2008.

According to the letter from [REDACTED], the rejection of eligibility to claim a deduction for personal superannuation contributions was based on the consideration that I am engaged in employment activity that results in me being treated as an employee for the purposes of SGAA.

I contend that on the basis of "being engaged in an employment activity that results in me being treated as an employee for the purposes of the *Superannuation Guarantee (Administration) Act 1992 (SGAA)*" is incorrect and that consequently the Notice of amended assessment should be withdrawn.

I wish to put forth my argument to the Commissioner in line with the Australian Tax Office Practice Administration as stated in the ATO Web-site under the Tax Tools : Generic Employee/Contractor decision tool whereby it is confirmed that my engagement is one of a CONTRACTOR (not an employee). To that effect I enclose a copy of the print-out of the Generic Tool. I also enclose a letter from [REDACTED] [REDACTED] being the main source of my income.

I would like to draw your attention also to the same Taxation Office Generic Tool document being the last paragraph under "**Important Information – Taxation Ruling TR 2005/16 and Superannuation Ruling SGR 2005/1 discuss the various indicators the courts have considered in establishing whether a person, engaged by another individual or entity, is an employee within the common law meaning of the term. The Employee/Contractor decision tool is based on those rulings.**" This clearly proves that I am engaged as a Contractor.

I also wish to point out that in the past I have worked for a number of clients and that because of my age I have downsized my activities and that within the [REDACTED] I work for a total of 6 entities. Due to the down-sizing above, the need to engage staff has not arisen.

Retirement :

I also respectfully request you to take into consideration that I acted whole heartedly and lawfully within the context of paragraph 1.11 of Explanatory Memorandum to the Tax Laws Amendment (Simplified Superannuation) Bill 2006. The two key points highlighted in this article were the new superannuation changes would encourage Australians – in particular those approaching retirement age to save for their retirement and the second point being they would be doing this under a new policy of contribution caps.

As I am nearing retirement age and extremely attracted to the newly tax exempt status of superannuation assets supporting pension, I sought to legally contribute money towards my superannuation balance in preparation for my retirement – all of which were key ideals outlined above. As the new rule introduced from 1 July 2007 provided for entitlement for contributions until the age of 75, I [REDACTED] sought only to maximise my superannuation contribution entitlements to the allowable caps. There was no intent to either avoid paying tax or to exceed the caps whatsoever and all my actions were aligned to merely meeting the available cap limits I am entitled to. I did not act recklessly in my approach, I was cautious and prudent to seek advice and at the same time simply wished to accept the benefits offered under the new superannuation regime introduced by the Australian Government and supplement my retirement fund to ensure its longevity.

Conclusion -

I contend that this objection, **supported by law**, has merit and cannot be dismissed as frivolous or bound to fail.

I respectfully request the Commissioner **to exercise discretion and withdraw the Notice of amended assessment for the year ended [REDACTED]**

I also wish to reiterate what I wrote in my previous letter and that consequently the Notice of amended assessment does not appear to be in line with an article prepared by the Future Tax System Review on Henry's Tax Review, namely :

.. ** maintaining tax assistance to superannuation but improving the fairness of concessions for contributions, including the broadening of access to them and considering whether the current cap on concession is appropriate;

** improving the ability of people to use their superannuation to manage longevity risk; and

** improving the awareness and engagement of individuals with the retirement income system.

Further, and without in any way limiting the foregoing, if the Commissioner purported to have formed an opinion, or to be satisfied or to have failed to be satisfied as to any matter, or to have exercised any discretion or power or to have failed to exercise any discretion or power, whether under the ITAA1936 or the ITAA1997, as a

basis of, or as justifying, the issuing of the notice of amended assessment for ineligibility of making a concessional contribution for the year ended [REDACTED], then the Commissioner failed to take into account the relevant consideration and contrary to law or events at hand.

Should you require further clarifications to the above, please do not hesitate to contact me on the above.

I look forward to receive a reply from you at your earliest convenience.

Yours faithfully,

[REDACTED]

Document 4: Copy of the ATO website decision tool used by the self-employed accountant to verify being self-employed



Employee/Contractor decision tool
Employee/contractor report

Version 1 0 0

DECISION: Based on the information you have provided, we consider that you have engaged your worker as a CONTRACTOR.

Today's date: 8/10/2010

You provided the following information

Work agreement

Do you pay a company, partnership or trust (other than a labour hire firm) for the services of the worker? No

Do you pay a labour hire firm for the services of the worker? No

Is the worker an apprentice? No

The worker's main activity or trade is: [REDACTED]

Does the worker have an ABN? Yes

Who does the work?

Does the agreement you have give the worker the right to pay another person to do the work instead of them? Yes

Is this specified in a written contract between you and the worker? No

Has the worker paid another person to do any of the work under this agreement? No

What to do next

[Personalised details](#)

You can:

- Enter some personal details by selecting the **Personalised details** button. You can then keep the printed report as a record of the decision.
- Print out a copy of this report for your records.
- Calculate any amounts you are required to withhold from payments made to employees under the PAYG withholding system.
- Use the SG Eligibility Decision Tool to determine your SG obligations, or the SG Contributions Calculator to calculate your SG contributions.

None of this information is recorded by the Tax Office.

Commonwealth taxation and superannuation obligations

1. Work out what your Commonwealth taxation and superannuation obligations are in relation to your contractors.
 - Do any of the following apply? For more information on your obligations, select the relevant link below.
 - You have entered into a voluntary agreement to withhold.
 - Your worker performs services for your clients under a labour hire arrangement.
 - Your worker fails to quote their ABN in relation to the provision of their services. - see No ABN withholding - questions and answers.
 - To claim a GST credit, you must be registered for GST and have a valid tax invoice.
 - There are still situations where you may be required to make sufficient superannuation contributions otherwise you will be liable for the superannuation guarantee charge. This applies to people who are paid to perform, present or participate in any entertainment or sport or services in connection with these. It also includes members of a State, Territory or Federal Parliament, a local government council or local governing body, in the service of the Commonwealth, States or Territories.
2. More information on Commonwealth taxation and superannuation obligations relating to contractors can be found:
 - at www.ato.gov.au/businesses/
 - by phoning us on 13 28 66 or 13 10 20 (Superannuation only), or
 - by writing to us at:
 - Email: SmallBusinessLaw@ato.gov.au
 - Fax: 1300 139 011
 - Post: PO Box 3100, Penrith NSW 2740
 - Post: PO Box 277 WTC VIC 8005 (Superannuation only)

General advice

The totality of the relationship between the parties must be considered to determine whether, on balance, the worker is an employee or independent contractor.

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). The principal/independent contractor relationship is often referred to as a contract for services.

Based on the information you have provided, we consider that, on balance, you have engaged your worker as an independent contractor.

Important information

- This tool provides guidance on:
 - the status of a worker – or class of workers – under the laws administered by the Commissioner of Taxation, and
 - payer Commonwealth taxation and superannuation obligations.
- The tool does not provide guidance on payers' obligations under state and territory legislation – for example, payroll tax obligations.
- Provided your answers reflect the actual circumstances of the arrangement, we will not charge you a penalty that might otherwise apply.
- The decision as to whether the worker – or class of workers – is a contractor or employee for Commonwealth taxation and superannuation purposes is limited to this arrangement. The decision cannot be relied upon if the arrangement changes or in respect of different arrangements with other workers.
- We have made every effort, including consultation with community groups and tax professionals, to make sure this decision tool reflects commercial practices.
- Taxation Ruling TR 2005/16 and Superannuation Guarantee Ruling SGR 2005/1 discuss the various indicators the courts have considered in establishing whether a person, engaged by another individual or entity, is an employee within the common law meaning of the term. The Employee/Contractor decision tool is based on those rulings.

Feedback

Please give us your feedback on this decision tool. It should take you around one minute to complete this online form and it will help us improve our service and provide us with statistical information on the use of this tool.

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Document 5: Letter from the self-employed accountant's client verifying that the accountant is self-employed



[Redacted]

The Deputy Commissioner of Taxation

[Redacted]

[Redacted]

Dear Sir

[Redacted]

I am concerned that my External Accountant, [Redacted] has reported to me that the Taxation Office has written to him advising that it is considered that he is engaged in employment activity because in excess than 80% of his income is derived from this company and for which I am the sole Director/Company Secretary. I am writing to confirm that the contractual agreement I have with [Redacted] is not one of an employment and that we have performed the required test from the Taxation web-site known as *Generic Employee/Contractor decision tool* and we have ascertained that [Redacted] is engaged as a Contractor and not as an Employee.

Background : [Redacted] (indirectly) joined this organisation some 9 years ago at a time when I have contracted [Redacted] for a required work portfolio. [Redacted] was free to engage whoever he needed to perform certain duties of the portfolio and consequently engaged [Redacted] for certain duties. [Redacted] was then being paid directly by [Redacted] for his services.

Rationale : For the financial in review, that is 2007/08, [Redacted] having terminated his contract from the company activities, [Redacted] was contracted to assume responsibilities of the work with similar conditions to those in force formerly for [Redacted] namely :

- ** Required to have the necessary hardware and software**
- ** Free to work for other organisations**
- ** Free to engage and pay other staff to perform the work**
- ** Submit Tax invoices with his ABN for the contracted work**
- ** Free to have the job done at whatever time-frame**

Please do not hesitate to contact me if you require additional informations.

Yours faithfully

[Redacted]