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Construction Industry Circular – July 2011

REPORTING OF TAXABLE PAYMENTS FOR CONTRACTORS IN THE BUILDING AND CONSTRUCTION INDUSTRY

Introduction

On 10 May 2011 the Australian Government announced the “Improving Tax Fairness and Compliance” package as part of the 2011-2012 budget.

The package included measures that are targeted at creating a more level playing field for taxpayers, thereby supporting the Governments ongoing commitment to ensure that everyone pays their fair share of tax.

A measure entitled “Reporting Taxable Payments” forms part of this package and requires certain businesses to report annually to the Australian Taxation Office (“ATO”) payments they make to contractors in the Building and Construction Industry (“BCI”) along with the contractors Australian Business Numbers (“ABN”).

This new regime will start on 1 July 2012.

The aim of the reporting regime is to improve compliance with taxation obligations of contractors in the BCI by providing the ATO with sufficient information to allow data matching for review and targeted audits.

This circular is a précis of the consultation paper circulated by the Australian Government in May 2011 which required feedback and comment from interested parties by 27 June 2011.

Submissions will be considered and the legislation will be implemented to take effect from 1 July 2012.

1. Background

While the ATO has made an effort over the years to educate and support subcontractors in respect of their taxation obligations, ATO data nevertheless indicates that compliance with taxation obligations by contractors is poor and presents a systemic risk to revenue collected.

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1.1 The Non Compliance Problem

Non-compliance with taxation obligations is not a problem unique to contractors. The ATO has identified a high level of non-compliance by contractors in the BCI, particularly in relation to lodgement, correct reporting and payment.

There are also associated problems with contractors not complying with GST requirements, record keeping requirements and the personal services income rules.

1.1.1 The Extent of the Problem

The ATO recently undertook compliance analysis on data from the 2006 and 2009 income years for the sixth largest industries in the micro market. These industries included the following broad industry groups:

- Building and construction;
- Financial and insurance services;
- Professional, scientific and technical services;
- Rental, hiring and real estate services;
- Agriculture, forestry and fishing; and
- Retail trade

The analysis revealed that the BCI was the least compliant of the six largest industries in the micro market.

The ATO's current audit program, under the *Level Playing Field – Strategic Budget Initiative* was established to target businesses engaging entities as contractors that may actually be employees, otherwise known as "Sham Contracting".

The ATO also used the audit program to check whether contractors were properly reporting their income by matching the details of income paid to contractors for the 2008, 2009 and 2010 income years with ATO records.

The audit revealed significant compliance problems with contractors in the BCI who had not correctly reported payments received in tax returns or activity statements.

2. Overview of the Proposed Reporting Regime

The measure proposed in the 2011-2012 Budget involves the introduction of a reporting regime that will require businesses to report annually to the ATO any amounts paid to contractors in the BCI, along with each contractor's ABN.

The measure will adopt the terminology within existing tax administration legislation and operate to require a "purchaser" to report details to the ATO of "suppliers" who they have paid for a "supply".

For the purpose of this measure it is proposed that a "supply" will include a supply under a contract that in whole or in part, involves a supply of building and construction services.

Supplies within the scope of the proposed reporting regime that will not be covered include:

- A supply that consists of only a supply of goods and materials; or
- A supply of labour under a common law employment contract where PAYG withholding applies.

Under its ordinary meaning, the term “supply of building and construction services” should cover services supplied which are commonly determined as building and construction activities. From a broad perspective, this should include, but not be limited to activities such as:

- Bathroom or kitchen fitting/installation
- Door, window frame and screen fitting
- Alarm installation and home security
- Brick laying/masonry
- Carpentry and joinery
- Building
- Electrical work and plumbing
- Cabinet making/furniture
- Fencing erection and installation
- Concrete supply and formwork
- Landscaping and paving
- Demolition/renovation
- Painting and decorating
- Swimming pool construction
- Pest control and termite inspection
- Excavation and earthmoving
- Air conditioning/heating installation
- Roofing and roof construction
- Glazier works
- Insulation supply and installation
- Tiling, plastering and concreting
- Scaffold supply and erection

Comment

We would expect that the proposed legislation will be a further step closer to achieving the desired objective of creating the level playing field in respect of taxpayer’s obligations in the BCI.

The implementation of the proposed legislation will see a substantial conversion of existing ABN individual sub contractors to employed Pay As You Go Withholding (PAYGW) employee status.

The increased level of PAYGW employees will see the ATO reporting and payment obligations of employers increase.

In concert with the current ATO perspective on collection of amounts due, we may see an increase in sub contractor trading difficulties.

We will keep our clients posted as the implementation of the legislation draws near.

DAVID HICKS & CO PTY LTD

**Sydney
July 2011**