

International Contractors' Handbook

2011/2012



For Australia and overseas



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This book is an attempt to clarify some of the confusion and myths that surround contracting. It has been compiled with input from service providers in Australia and overseas, and is not intended to replace the advice of accountants and financial advisers. It does however aim to provide guidance as to the questions to ask and the issues to check.

The author would like to thank the CXC Global compliance team for their input and contributions.

About the Author

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with the IT and Contingent Workforce industry. Dave has been a member of the Australian Computer Society (MACS) for 28 years, a founding member of Australian Contract Professions Management Association (ACPM), an Associate member of the Information Technology Contract Recruiters Association (ITCRA) and a foundation member of the Contingent Workforce Management Association (CWMA) in Australia.

Contracting as a Career



1

“ Most choose to contract so that they have some control over the hours they work and the projects they work on ”

Many individuals today are “career contractors” by choice. In many cases they may have not set out to create a career of contracting, but fell into it by demand or accident. They then found that they enjoyed the flexibility provided in choice of work, choice of hours and choice of lifestyle. It is estimated that there are now 30,000 white collar professional contractors in Australia and over 200,000 trade services companies.

Most choose to contract so that they have some control over the hours they work and the projects they work on. There is some risk associated with contracting but these are far outweighed by the benefits, such as a higher income and a more flexible lifestyle.

As a result of the recent downturn, many professionals in a variety of fields have found themselves unemployed. In many cases the only solution has been a rapid change of career or to become a “consultant” in their field of expertise. Work is in short supply and contracting has been forced on many, including those “outplaced” from corporate and government positions.

This trend is global, all sectors are seeking to lower costs and industry is attempting to rationalise and build a more flexible workforce. Those who elect to become consultants often have excellent skills and expertise in their specialist areas, but NO knowledge of running a small business, or dealing with tax and compliance issues. Some survive, some don't. The failure rate of new businesses is alarmingly high, with 95% of them not lasting longer than five years after establishment.

In today's tight economy, especially in the project driven IT sector, flexible workforces and controllable costs are every corporation's ideal. Once salary costs such as redundancies, sick and long service leave payouts, payroll tax, insurances, healthcare, superannuation/pensions, annual leave and more are taken into account,

the real cost of employing permanent staff is around 150% of salary paid. On the other hand, while contractors earn around 20-30% more than an “employee” they do not attract the same overheads.

Many corporations are favouring a flexible contract-based workforce but are hesitant to take on small “mum and dad” companies or sole traders because of the risks associated with these structures. They tend to be viewed as tax avoidance shelters and the individuals may be entitled to employee rights under labour law. Conversely, most individuals do not understand the pitfalls or know how to take advantage of the tax benefits available to contractors. The Alienation of Personal Services Income (APSI) laws in Australia, and the Anti-Avoidance legislation in New Zealand (the so called 80/20 rules) has caused extensive confusion with the tax authorities' reporting requirements, scaring off 30% of the contracting workforce.

Every country has its own anomalies surrounding labour law and tax legislation. Australia has been exporting Australian intellect for many years, intentionally and unintentionally – from gold prospector through to accountant, medical staff, IT specialists and aeronautical and oil rig engineers. In fact, Australians and New Zealanders lead the way in working globally in Indonesia, Asia, Europe, Africa and the United States. In many cases they end up contracting and passing their skills onto others in another country.

Indicators point to this being the way of the future for workforces and Australia has a strong representation globally. The Aberdeen Report suggests that 25-30% of future workforces will be made up of a “Contingent Workforce” component. This is a good thing for Australians who are particularly favoured in Asian countries as we are seen as part of Australasia and

far less political than some other Western countries. We lead the way in many Asian countries in providing training and skills transfer to the local populations.

IF YOU ARE THINKING OF JOINING THE MILLIONS OF CONTRACTORS GLOBALLY, IT CAN LEAD TO A FULFILLING AND EXCITING CAREER.

You need to research your market and understand where you fit in that marketplace. It is important to know how many contractors already work in your area of specialisation, who your competitors are, how much they charge, and then position yourself accordingly. You also need to decide what unique advantages you can offer such as customer service, business knowledge, specific skills and relevant experience. Price is part of the equation, but trading terms also need to be considered. If you operate through a recruitment agency at an hourly rate, they will pay you fortnightly or monthly in accordance with your agreement. If however, you operate directly with an organisation, then their terms of trading are normally 30 or 60 days from invoice – which can sometimes stretch to 90 days. This situation may create a serious cash flow problem if you do not have a buffer.

If you are considering contracting, then devise a clear strategy that recognises and covers the following:

- clearly define your product and service offerings
- identify your target audience and market segments

- review the scope, size and trends within your market
- define your pricing models, method of billing, terms of trade
- identify and understand your competition
- identify your personal strengths and weaknesses
- create the appropriate resume, summary of experience
- seek out networking opportunities
- get your profile out there and market your unique strengths
- ensure you have some cash backing for slow months
- plan how to land contracts quickly
- consider working globally and the associated wealth creation options

Today, social media such as Twitter and LinkedIn can provide valuable insight into the trials, tribulations and rewards of contracting. They can also give you some insight into the competition. We will discuss the use of social networks later in the book.

Adopting the right business structure for yourself and your clients is a major part of contracting. However, this does not need to be cast in concrete as your personal needs will change over time as your lifestyle changes. Plan for the long term but structure for the short term. If you are new to contracting, seek out the safest option until you are sure that it is right for you in the long term.



Structures and Taxation



2

“ Ensure you set up proper business-to-business relationships and contracts with your clients ”

In every country there are many issues to deal with when determining how best to structure yourself as a freelance contractor, including consideration of what statutory reporting requirements exist and how the various tax departments treat independent contractors.

In Australia, most contractors are paid directly by agencies as PAYG (Pay as You Go) employees; many others set up their own business as a sole trader by registering a business name (or even a one-person limited liability company) and some use management companies to provide structures and salary packaging solutions. The advantages and disadvantages of all these options are discussed in this chapter. As we focus on the Australian market, it's important to remember that these solutions may not be the best in other countries. Hence we recommend that research be done on the destination country PRIOR to travel even though there are some innovative global solutions that can be implemented with good pre-planning.

USING THE AGENCY TO INVOICE AND PAYROLL

Advantages

This is the simplest option and the most common in Australia. Most consultants do not even make new contractors aware that there is another option, as it makes no difference to their commission cheque. The advantage is that you have very little administration to do other than provide your timesheet to the agency.

Disadvantages

TAX!! This way you pay maximum tax, and this negates one of the main reasons for contracting – earning 20-30% more. The top marginal rate in Australia is 48.5% and being a PAYG “employee” for the agency is like being an employee anywhere else and there is very little that can be claimed as business expenses. Once

the tax has been deducted and paid to the ATO, they are a little reluctant to pay any of it back to you unless you have some very valid reasons. As a contractor, you do not get annual leave or any of the other benefits that a “normal” PAYG employee gets, so while this is the easiest option it is also the least desirable. In fact it almost defeats the purpose of contracting to maximise income.

REGISTERING AS A SOLE TRADER

Advantages

As a sole trader you can offset your business expenses against your income, without having the many administrative or legal responsibilities of a limited company, which is a separate legal entity in its own right.

As a sole trader, your business income is counted alongside your existing personal income, so the accounting side of your business is very straightforward. Most importantly, business expenses, and any losses, can be offset against taxable income, although things like depreciation cannot.

Disadvantages

The tax office can decide that you are “deemed employed” and if they do would seek to recover higher levels of tax from you. This would certainly happen if you only had a single source of personal services income providing over 80% of your gross income. Needless to say, many six-month contracts roll over to 12 months, and expose contractors to this risk. The Alienation of Personal Services Income (APSI) legislation has a range of checks that allow genuine independent professionals to operate as sole traders if they are truly responsible for their outcomes for example, sales professionals and web developers.

As a sole trader, you are personally liable for any debts you incur in the running of your business, including law suits. These are things you wouldn't have if you operated as a Limited Company. It also means personal assets such as your home are potentially at risk if you have a claim against you for services delivered. Additionally, as a contractor, you are not entitled to leave or benefits.

If you land a contract via an agency, they may expect you to provide your own insurances for Workers Compensation, Public Liability and Professional Indemnity, and this can be expensive. Many clients are wary of engaging consultants or contractors who are sole traders because if you are "deemed employed" – or have a claim, they may suffer financial consequences. Finally, be wary of "partnerships" (see below) as all partners are jointly and severally responsible for the actions and inactions of all the other parties. It is preferable to avoid structures where you are placed in a partnership.

Consider your needs

Check with your existing or prospective clients to see if there is any objection to working with you as a sole trader. If any of them are reticent, you might be better off considering some of the options outlined in the following few pages.

You should consider whether your activities are likely to incur any large debts or expose you to legal claims that could put your personal assets at risk and decide whether you can mitigate against them. If you aren't incurring debts, then you should be safe enough as a sole trader, as long as you have the relevant indemnity insurance in place against law suits.

Finally, speak to your accountant to compare the cost of operating as a sole trader versus a limited company. Examine closely the tax implications and consider the administration required to report and file statutory returns. If it is not significantly greater than what you would receive otherwise, you might be better off looking at some of the following options.

PARTNERSHIPS

For a number of reasons, partnerships are not extensively used. First there is very little protection against claims and, very little benefit for contractors paid by the hour since they will not generally pass the APSI tests, plus you have the same running costs and administration requirements as a Pty Ltd company. The exception is the Australian Capital Territory (ACT) where partnerships are commonly used to circumvent the Payroll Tax requirements by keeping revenue under a certain threshold. Be aware there are General Partnerships and Limited Partnerships. With a General Partnership ALL partners are jointly and severally liable for the actions and inactions of all partners, whereas Limited Partnerships have one managing partner and the liability is limited as is the case with a Limited Company.

Advantages

There are very few advantages except perhaps in the ACT. The cost of set up is slightly less than setting up a company, but the same statutory and administrative regulations apply.

Disadvantages

If any of the partners withdraw from the business (if they die, resign or go bankrupt), the partnership must be dissolved instantly. It has no legal status.

In addition, unless it is a Limited Liability Partnership, all partners have joint and several liability for the debts of the partnership. (Please note that a partner's own tax is not a debt of the partnership.)

Finally, if any of the individual partners fail the APSI tests, the partnership will bear the financial consequences in the same way as a Limited Company, i.e. liability for tax, superannuation and employment benefits. The partnership can also be named by a partner for unfair dismissal claims in the event of an early termination of a contract. In general, partnerships are a risky business structure.

Consider your needs

The first consideration is for how long you are intending to contract? If it's just for a few months and in the ACT, then a partnership may be an option. If however, you need a long term structure, or intend to work for yourself for the foreseeable future and will employ others to deliver projects, this is not an option. Be sure to check if your client or prospect will accept an invoice from a partnership and what insurances they require.

SETTING UP A LIMITED COMPANY

There are a large number of contractors working through their own Limited Company because this option is recommended by many accountants. However, most accountants are generalists rather than specialists and do not understand all the issues around contracting particularly around the APSI legislation in Australia.

The quickest and easiest way to set up a Limited Company is to go to an accountant or company formation bureau and buy an "off the shelf" company, which will cost you between \$600 and \$1000, although some accountants will charge far more (if they can) for registration of the chosen company with the tax office. A limited company must have at least one director and a registered office and will be allocated an Australian Company Number (ACN).

A Limited Company is a distinct legal entity in its own right. You, personally, are not the same as the "company"; the law sees the Limited Company as a separate "person". As such, the company has rights and responsibilities and can own property or equipment. The company may also have a business account with suppliers, operate its own bank accounts, hold shares in other companies and act as a trustee of trusts and investments.

Advantages

Being a separate legal entity, a registered company is solely liable for any debt it incurs. Your personal assets, such as your home, are not a part of the company and are not at risk unless you act illegally or commit fraud as a director.

Having a company structure may assist with establishing credibility with clients, suppliers and financier; however, they may still want to check the working capital and trading results before doing business. In a one person company the capital is normally only a few dollars.

When an agency secures you contracting work, they are not required by law to deduct tax at source. Instead they can pay you the gross amount, which enables you to apply more tax efficient strategies, such as running business expenses against your income, provided you meet the Alienation of Personal Services Income tests. Because the company can own assets, these can be depreciated and the company can invest and pay dividends to shareholders.

With a company structure you can control how you combine salary and dividends paid to yourself and other shareholders. The company can retain earnings and invest in other assets. In many cases a limited company is a tax-efficient strategy but only works well if you have several clients and multiple employees.

Disadvantages

As a director of a company you have serious legally-enforceable responsibilities. And as there is far more administration required, the cost of compliance is higher when running a company rather than when operating as a sole trader. For example, you need to comply with statutory obligations such as submitting quarterly BAS statements as well as annual company returns and accounts. Compliance costs will not be less than \$2,000 p.a. and can be substantially more (\$4-6,000 p.a.), especially if your accounting firm also provides bookkeeping services.

Another risk is that the Australian Tax Office (ATO) can "deem" you to be employed if your relationship with your client resembles an employer/employee relationship, and your company will suffer the financial consequences by having to pay employed levels of tax and superannuation on all the fees paid by your client to your company. These fees are often retrospective.

With a company, your administrative tasks also include invoicing, debt control and collection, preparation of documents for annual returns, paying creditors, as well as researching and purchasing insurances. (Normally these insurances can be obtained at lower cost through management companies or trade associations than if purchased directly from the insurance companies).

Finally, as in the previous options, you are not entitled to any paid leave or benefits. In addition money spent on personal items is deemed to be income rather than a business expense.

Consider your needs

With the costs entailed in setting up a company, the first thing to consider is how long you intend to contract? If it's just a few months, it will not be worth setting up a Limited Company. If however, you need an investment structure or intend to work for yourself for the foreseeable future and employ others to deliver projects, this is a good option. Be sure to check if your client or prospect will deal with a sole director company that has a low capital investment. Many large organisations seek only to deal with other large entities as they feel they need a substantial company in the event of legal action.

Consider how much an accountant would charge to handle statutory requirements and company accounts for your limited company. Some charge for advice as well as services, so ensure you have the whole picture.

You may find the higher costs and administration of running a limited company are outweighed by the advantages, such as limiting your liability and additional tax efficiency.

Consider the issues of employment status and how to avoid being deemed an employee. Ensure you set up proper business-to-business relationships and contracts with your clients, and pass the APSI business and "results" tests.

CONTRACTOR AND CONTINGENT WORKFORCE MANAGEMENT COMPANIES

A contractor management company (CWM) provides contractors with a ready-made company structure to facilitate invoicing and administration. Each contractor is treated like a senior executive of the managed company with a "contract for services" rather than a "contract of employment". The structure is a legal company structure which may have hundreds, even thousands of individuals on PAYG payroll and hundreds of clients, hence it passes all the APSI and personal services business tests. Each individual is "deemed" an "employee" by the tax office so there are minimal issues about employment status with the end user or agency. As they do not want to be deemed the employer, this structure mitigates their risk. The contractor management company supplies the worker to the end user either directly, or via an agency, and covers all the worker's insurance needs. It also provides a substantial legal entity between the end user and the contractor, which gives greater assurance to the end user.

Other major benefits to the contractor are that by being part of the workforce they can claim business expenses that would not be available to an employee deemed to be based "on site". This includes many additional items that may be taxed at a concessional rate, as well as depreciation which only applies to companies rather than individuals.

The contractor management company charges the contractor a fee for the provision of their services, but this fee should be more than covered by the tax savings generated. The contractor ought to be far better off than if working similarly as a PAYG employee due to the salary packaging options made available to them. Contractor management companies come in all shapes and sizes – their main purpose is to maximise their earnings while making life simpler for contractors through taking away responsibility for administration and compliance and reducing the amount of tax that they pay.

Advantages

By using a contractor management company you are handing over the hassle of carrying out administration and the responsibilities of ensuring compliance, purchasing insurance and understanding the ins and outs of the tax system as it applies to contractors. You still have to secure your own work, but the CWM company does the rest, such as invoicing, debt collection, payroll and all associated paperwork as well as statutory company returns. This simplifies the process for you, saves time, and removes the need to be aware of the legal requirements and risks involved with running a company. The cost of insurances such as Professional Indemnity and Public Liability are a fraction of the cost that you would pay as a sole trader or in your own Pty Ltd company because of the CWM's buying power.

Often your clients will not work with a sole trader, yet insist that you work in a way that is "deemed employed" without wanting to actually employ you. Management companies provide a way of working with these clients. At the same time, you are able you to negotiate a proper business-to-business contract, and take advantage of smart payment options to minimise tax under the various tax regimes. These structures are normally very tax efficient because the management company will specialise in local tax laws and will know what can and cannot be claimed, and how to achieve the most tax effective combination.

The fact that you are paid a regular income and appear to have "employee" status helps with proof of earnings for home loans and car leases (in fact there is a smart strategy around motor vehicle leasing in Australia that enables you to re-invest in your mortgage if you own your vehicle outright, as vehicle leases are concessional tax).

Although you are paid a regular income, you do not have a "boss". You are your own boss and you decide who you work for and when, and are only required to deliver as per your contract for services with the end user.

Disadvantages

A CWM is not your own company and therefore you would not use this option if you are looking to build your own brand, or run your own employees. Should you choose to go direct to the end user, bypassing the agency, you may achieve a better rate, however there is a delay between invoice date and payment date. Management companies do not provide, they only pay on receipt of funds from an agency or end user. Agencies normally pay fortnightly or monthly irrespective of receipt of funds from the end user, which in part justifies their larger margins.

As with all of the above options, contractors are not entitled to any leave or employee benefits.

Consider your needs

If you are intending to contract for a short period, say a few months, this is by far the best option. The same applies if you plan to be a career contractor and do not wish to take on the responsibility, costs and administration associated with running your own limited company.

Most end users prefer this option as you are required to pay some tax, and they have no risk or liability.

If you choose this option, make sure that the service provider does take care of your PAYG taxes and pays this over to the Tax Office monthly. Any providers that claim to be able to pay you gross, without deducting tax at source are likely to get you into hot water with the tax authorities, unless they have a compliant trust structure and you pass the appropriate tests. Nevertheless, the ATO frowns on trust structures, even if they are compliant.

TRUSTS STRUCTURES

There are some advantages in running a trust structure if you plan to contract long term and have disposable cash that you may wish to invest. Some management companies offer this as a way of contracting but this is risky as the ATO is looking very closely at these structures. Whilst they are legal, provided the stringent tests are met and you are clearly responsible for the outcomes and carry the full business risk associated with your activities, these structures will always attract attention as they circumvent the APSI legislation.

It is suggested that if you choose to set up a trust, that this is done properly in your own right, and run as a trading trust. The following comments assume that a trading discretionary trust is being used.

Advantages

A trust provides a simple way for you, or two or more people, to work in a way that is quite similar to being a sole trader or partnership, but with reduced risk. You still have as many administrative burdens as a limited company because a trust has similar separate legal status. Reporting structures and tax treatment would be the same as for a company. What essentially differs is the method of payment to the beneficiaries.

A trust distribution does not attract payroll tax and there is no requirement to withhold tax or superannuation on distributions. There is also no requirement to have Workers Compensation insurance in a trust. As a trust can have multiple beneficiaries receiving distributions (effectively bypassing the APSI legislation) there is a need to be very clear that the relevant tests can be passed. A trust can invest in almost anything, creating long term passive income streams and retaining profits for further investments. Any funds paid to beneficiaries will be taxed as normal taxable income. Profits will be taxed at corporate tax rates, which is far less than top marginal personal tax rates.

Another big reason why some people favour trusts is to ensure asset protection from creditors and hostile ex-partners, spouses, and other claimants. You can act as a trustee of the trust, thus controlling assets and income streams, but not owning the assets directly. Trusts are a powerful tool if used correctly, but take care not to use them as a tax evasion tool as the ATO will apply Part IV regulations, look through the trust and deem all the income as personal services income which will result in you being personally liable for taxes on ALL income received.

Disadvantages

Because trusts are not commonly used, not many accountants know how best to leverage the trust structure. You will probably need to take specialist – and often costly – legal advice to ensure that the trust is correctly structured to meet your specific needs. This is a worthwhile investment if you have assets to protect and a cash flow that facilitates investment. Many companies will not accept invoices from trusts because there is no requirement for insurances (e.g. Workers Compensation) as there is with companies. However if a trust structure suits your needs, some management companies will provide such insurances at a reduced management fee.

Consider your needs

If you are intending to contract for a short period, say a few months, this is not an option. The same applies if you do not wish to take on the responsibility associated with running your affairs and investments and the associated administration. Trust structures are for career contractors that have surplus income for investments, wishing to maximise their investment opportunities and protect their assets. Trusts can create a separate source of passive income that in the long term could become a retirement income.

ARRIVING AT A VERDICT

As is obvious from the above, this area tends to be a bit of a minefield. The best choice is often not clear-cut. What starts off as being a three-month contract may end up running much longer, and contracting for a year can lead to a lifetime of contract work for some. Others use it as stop gap between “permanent” employment assignments even though a “contractor” has better income guarantee than a regular employee if the contract is smartly negotiated.

Because of these varying circumstances, it is probably best to “suck it and see” for a period of time, nothing is forever and it is best to enter the contracting world slowly. Contractor management companies have rapidly evolved for this reason.

Because of cost cutting measures and the prevalent use of tight project management with transient specialist contractors, there has been a need for a new (and global) understanding of taxation and labour laws. A new breed of “management company” has emerged, which specialises in facilitating the global movement of intellectual capital from country to country. Commonly known as “contractor management companies”, these organisations serve the needs of a global flexible workforce by providing tax guidance and structures to operate in all major countries. Whilst salary packaging specialisation is an integral part of the service, these organisations do not simply visit HR managers and suggest a few simple principles for effective salary packaging (as may have been done in the past), leaving the payroll department with the burden of implementation. These management companies actually provide the payment structure, run the payroll and administer all the details, answer the questions and even take existing employees off the corporation’s books if required.

The services provided typically include payroll administration, salary packaging and tax guidance, legal structures for the payment of contractors and staff and global movement of specialists including the facilitation of visas and international payments. With an increase in the need for a flexible global workforce, these services are becoming more and more essential. In most countries the services of a management company

is invaluable to the contractor. In rapidly growing countries like China, where foreign corporations have great difficulty and costs establishing themselves, these services are almost essential.

In these countries, such management companies can benefit corporations as well as contractors. For management companies, running payroll is a profit centre, rather than the cost centre that it represents for most corporations. The management companies recover their fees from tax savings, hence most individuals end up with more cash-in-hand, and are at least cost neutral to the corporation. In many cases, there are significant salary on-cost savings to be had by the corporation. (See appendix A: Best Practice in Contingent Workforce Management)

These arrangements benefit both contractors and corporations. Contractors are able to expense business related items (e.g. motor vehicles, computer hardware, computer software, mobiles, work related training and travel, insurance, voluntary superannuation etc.) from pre-tax dollars, resulting in increased net remuneration and lifestyle benefits.

Administration is reduced for corporations, as are the on-costs generally incurred through employment, (eg. public liability, employer’s liability, payroll taxes, long service and sick leave, benefits package etc.). The corporation also reduces its risk of litigation as under common law they are not seen as the “employer” if the contractors are independent. In turn, this has brought about an improvement in contractor/corporation loyalty through enhancement of net benefits to these independent contractors. It is a win for all concerned.

Whichever option you decide on, make sure that you get good professional advice from a recommended accountant who clearly understands tax laws as they apply to contractors. All too many general accountants will suggest opening a company as it creates work for themselves, when in reality forming a company is one of the worst options for a contractor being paid an hourly rate for services rendered, which is the case in most contracts. A company structure under these circumstances would not pass the APSI test.

Seeking Projects Agency Networks



3

“ Remember that you need to earn 20-40% more as a contractor to make up for the benefits of being an employee ”

The information technology industry has traditionally been project-driven, leading to a great demand for contractors and specialists. Today due to outsourcing and corporate downsizing (particularly prevalent during an economic downturn) more and more accountants, lawyers and other professionals are also being offered contract positions. Similarly, corporations who retrench or make staff redundant may be forced to bring some back on a contract basis in order to continue delivering their products or services.

Should you find yourself in this position, remember that you need to earn 20-40% more as a contractor to make up for the benefits of being an employee, such as being paid annual leave, sick leave and superannuation. Corporations pay around 5% payroll tax and 10% superannuation on all employees, so they save this if they contract you directly. When you add this amount back to your rate, as well as 2% to cover the Workers Compensation (Workcover) insurance you will need, together with the cost of leave and you are quickly looking at 30%. In addition, as corporations normally pay 30 or 60 days after invoice, the cost of funding is a further 1.5 per month. If they were to employ you through an agency, there would have been a fee of 15-30% for recruitment as well. These figures clearly show that as a contractor it is not unreasonable to ask for 30-40% above what you were previously earning.

When you are offered a contract through an agency, they are often prepared to pay you fortnightly or monthly but may charge or withhold an administration fee (typically 2.5-3%) as well as an insurance levy for professional indemnity insurance. They also need to withhold tax and superannuation. Some agencies prefer not to “employ” you and request you to arrange your own structure, or to provide an ABN (Australian Business Number) to register for the Goods and Services Tax (GST). When the contract offer is from an end user company, then you will be required to have a company structure, an ABN and GST registration. Many corporations will not deal with sole traders or small companies (refer to the chapter on Structures and Taxation).

In the current Australian market 70% of contractors are sourced through recruitment agencies. The figure is less than 10% in the USA. Choose a few select agencies that specialise in your skill-set, and meet with them personally, rather than blasting your resume to a dozen agencies in the hope one may stick. Follow up with them regularly (at least twice per week) because the squeaky wheel gets the oil here. Remember these consultants often deal with hundreds of resumes daily and yours can get buried very quickly. If they know you are going to call again in a few days, you have a better chance of staying near the top of the pile.

There is a strong move towards organisations building their own talent pools and it is suggested that you pursue both avenues. It is prudent to seek work wherever you know your skills are required. Register on the relevant general web sites, Seek and LinkMe and your local area sites, as well as on industry specific sites like JobNet and IT2 for IT. Generally, anything that is in print will be on the web somewhere so search these sites. Word of mouth is still the best source of employment so tell everyone who will listen about your skills, especially your peers. You will be very surprised where offers come from. Use Google to seek companies that use your skill set and apply directly through their web sites or their HR departments. They too will be seeking to save on recruitment costs and may include you in their talent pools.

Be prepared to move from your current comfort zone. You will become a more valuable person by gaining experience in other places, companies and fields. Do not expect an exact fit; go for roles that will enable you

to grow your skill set. Remember that contractors do not get trained by their “employers” so you need to up-skill at every opportunity.

If you have been retrenched and received a payout, it is best not to wait till this runs out before you start looking, because this may be too late. Take advantage of outplacement specialists if this is offered to develop a simple and effective resume, as your existing one will probably be very out of date. You will not be the only person retrenched, and there will be school and university leavers also competing in the job market. For some reason it is always far easier to find employment when you are employed than it is when you are unemployed.

Finally, I cannot emphasize enough, keep an open mind. I have had some of the most amazing career changes by just going with the flow and keeping an eye out for new opportunities. There are constantly new products and whole new industries evolving that may need an adaptation of your skills.



Social Networks



4

“ The core of a business is sales and it is in sales that these social business networks can offer so much ”

The definition of a social network is a social structure made of individuals (or organisations) called “nodes,” which are tied (connected) by one or more specific types of interdependency, such as friendship, kinship, financial exchange, dislike, sexual relationships, or relationships of beliefs, knowledge or prestige. (http://en.wikipedia.org/wiki/Social_network)

In today's day and age it is apparent that the world is shrinking and it is much easier for individuals and organisations to connect and discuss all ranges of topics. Such networking has become the source of developing business strategies, prospects, engagements, knowledge and exchanging ideas and information of common interest.

There are over 175 social network sites globally (excluding online dating sites) and the number is increasing. Large and common social networking sites that are growing at extraordinary rates include Facebook, Twitter and the business social network, LinkedIn.

LinkedIn provides a broad spectrum of the social demographics of persons engaged in an organisation and an insight into the organisational structure. Individuals across the business community, from the receptionist through to the chairperson, are featured in LinkedIn with profiles ranging from a simple listing of their name and job title to sophisticated breakdowns of a person's history, current status and future plans in their career and business. Organisations are able to bring together their personnel into one domain to engage in the activity of passing knowledge and notices between each other. This is very similar to the way an organisation's intranet wiki operates. With the latest technology introduced into these social business networks, it's much easier for companies

to communicate externally with other organisation, or internally with its own workforce. Some of the techniques used are sending internal messages to persons connected to a friend, colleague or associate within a given persons community, presentations, files stored for download by interested parties, and personal expressions of speech raised in statements, questions, answers and advertising.

Where permission has been given, individuals and organisations are able to track who they have in their built community and whether they wish to share this community with them. Organisations can learn many professional, personal and career traits about an individual within their organisation, as well as about those they are thinking about bringing into their organisation, or those with whom they wish to interact or share business. Social business networks are built on TRUST and it has always been advisable to do further research to validate the trust of an individual or organisation you are thinking of engaging and dealing with.

The core of a business is sales and it is in sales that these social business networks can offer so much. Joining a community group or an individual community of connected persons will broaden an individual's and organisation's chances of building their “sales pipeline”. The greater and broader the connections and community of the individual and organisation, the greater the success of the bigger sales pipeline and its prospective outcome.

The success of a social business network is in demonstrating trust and loyalty within that network. Many organisations overlook the trust and loyalty certain individuals express in these networks and look primarily to the size of a person's community of connections. However, the size of a person's community network does not mean that the person is expanding along the right tracks of business and relevant social business acumen, but could be merely an "Open Networker" who connects with anyone that will connect to his or her community. It is not always about the size of the network community that counts. What's most important is the **relevance** of the network community created.

Within these social business networks are groups formed to bring together different individuals who have a common interest in the theme of that group. Some may merely be within the group to seek advice, ask questions, find answers or take part in discussions on related and relevant topics. Others may want to connect and interact with unknown individuals from across the globe who share a common interest in order to gain and share knowledge.

In the contingent workforce industry, it has become quite apparent that connecting with certain individuals can create sustainable career moves. These contractors/

consultants can engage with a person within an organisation where he or she wishes to be engaged – or is about to be engaged – by being in discussion with someone already within that organisation or with a person who will facilitate the engagement. The interested party can learn who they will be working with, or for, and thereby make informed decisions on their engagement.

The recruitment industry is taking full advantage of these social network sites to source prospective candidates for their clients. However, with the advancement these networks are making the client now also has the ability to do their own sourcing, a fact that is becoming more and more apparent. Organisations can build a database of individuals they wish to engage now and in the future based on their status in the network, their career history and success, their current position and their future plans. So-called "well-connected individuals" are becoming more and more in demand, yet on the other side of the coin, organisations don't want to lose these individuals.

Organisations themselves are able to promote their status in the business world and are able to make a broader reach into their industry and broaden their geographical reach.



Future of Contracting



5

“ Most organisations are more concerned with achieving the result than with when the individual actually works or where they work from ”

Contracting has a strong future, and will only get stronger as workforces mature and workers move towards a more balanced lifestyle. Many organisations are already catering for mothers with young children by offering flexible hours. This will extend to many professions as specialists choose to work as contractors rather than employees, and corporations seek to engage specialists for specific projects rather than employ individuals full time. This is a win/win for all concerned.

Conversely, unions and governments will always oppose contracting because it is seen as a drain to union membership, while governments fear a loss in social security and tax payments. In Europe, where taxes on employees reach as high as 60-70%, this has a huge impact and both labour laws and tax laws making contracting a complex area. While contracting will never be eradicated, compliance laws may be made

more difficult in an effort to discourage it. The reality is that every country has a huge dependence on small business to drive employment, and small consulting companies often become big ones. Small business is encouraged and independent contractors are the start of small business.

There are still many advantages to contracting. You get to choose the work you accept and the projects you work on, rather than being told what you have to do. Contractors are also far more in control of the number of hours and days they work as well as when these hours are worked. Most organisations are more concerned with achieving the result than with when the individual actually works or where they work from, which in turn allows contractors to work from home. This enables contractors to take on multiple contracts when times are financially tight, or to build up investment capital when times are lucrative.

The Corporate Perspective



6

“ Industry is building a flexible workforce of contract specialists rather than employing permanent staff to deliver their product or services ”

Most corporations have become acutely aware of the need to reduce employment and recruitment costs. While this was accelerated by the economic downturn of 2009, the trend had already begun. For some years, internal recruitment teams have been focused on acquiring tools to build talent pools of people in their particular space. Recruitment Processing Outsourcing (RPO) vendors have been selling software into this space for some time. In technology-smart USA, only 5% of recruitment actually reaches recruitment agencies.

In spite of the economic downturn, there remains a skills shortage in many areas. Some organisations with foresight have been acquiring skilled specialists during the downturn and generally consolidating their workforce, making B and C workers redundant. While the Australian Government is attempting to implement the Gershan Report recommendations (one of which is to reduce contractor numbers) industry is building a flexible workforce of contract specialists rather than employing permanent staff to deliver their product or services. This raises other issues and risks around labour or employment laws, as well as risks with respect to insurance cover for workers compensation, public liability and professional indemnity. This has stimulated the growth of Contingent Workforce Management (CWM) companies, also known as Contractor Management or “Umbrella” companies.

CWM companies provide specialist services around contractor engagement, actually run the payroll and administer the detail, answer the questions and take the employees off the corporation’s “fixed costs” into a “variable cost”. Some also provide and implement effective attraction and retention strategies through salary packaging.

Furthermore, part of the entire corporate or agency payroll can be outsourced and administered separately. The services provided typically include payroll administration, salary packaging and tax guidance, legal structures for the payment of contractors and staff, global movement of specialists including facilitation of visas and international payments. With an increase in the need for a flexible global workforce, these services are increasingly becoming a commercial competitive advantage.

For CWM companies, running payroll is a profit centre, rather than the cost centre that it represents in most corporations. The management companies recover their fees from tax savings, hence most individuals end up with more cash-in-hand and are at least cost-neutral to the corporation. In some cases, there are major salary on-cost savings to be had by the corporation.

These arrangements benefit both contractors and employers. Contractors are able to expense business related items (e.g. motor vehicles, computer hardware, computer software, mobiles, work related training, insurance, voluntary superannuation etc) from pre-tax dollars, resulting in increased net remuneration and lifestyle benefits.

Corporations using the services of CWM companies have a reduction in administration as well as the on-costs generally incurred through employment, (e.g. public liability, employer’s liability, payroll tax, long service and sick leave). There is also less risk of litigation for the corporation as they are not seen as the “employer” under common law if the contractors are independent. Interestingly enough, there is an improved employee-employer loyalty through enhancement of net benefits to these independent contractors.

Looking outside Australia, when an organisation identifies an opportunity to provide services into any country but feels daunted by the onerous establishment costs and/or red tape, it may well be worth investigating the services of a global CWM company. Bear in mind that these companies do not generally provide recruitment skills, nor do they identify the commercial opportunities. They primarily facilitate the movement of people that may be required on the ground, and provide the infrastructure to enable an organisation to operate until such time as they choose to set up their own infrastructure.

The 2008 global financial crisis forced many companies to explore new methods of saving money with respect to engaging human resources. Implementing hiring freezes, reducing the size of the workforce, cutting training, reducing employee benefits and implementing other cost reduction initiatives have all been utilised as part of this ongoing battle.

With an ongoing focus on “the war for talent” giving way to the more immediate needs of lowering costs and in some cases, corporate survival, it would be easy to overlook the contingent workforce as part of the solution to both these challenges. However, one would be foolish to do so.

Today’s employment mix comprises a diverse composition of talent from a variety of sources. Among them is the contingent workforce – a group of contractors, consultants, temporary workers, interim executives and so called freelancers.

Contingent or contract workers are a post World War II phenomenon where temporary workers were primarily used to fill vacancies due to leaves of absence (like maternity leave or illness). The use of contingent workers has continued to flourish across the industrialised world.

No longer are contingent workers found solely in light industrial or clerical roles. Today, with the increase in workplace specialisation, even the most highly educated and specialist vocations feature a supply of contingent workers. They have become an essential part of today’s labour and talent pool mix.

This ever-increasing move to a contingent workforce brings with it a multitude of challenges and in many cases risks. How can an organisation take advantage of the flexibility and agility associated with a contingent workforce whilst protecting itself from the complexities and risks involved?



Compliance Requirements in Australia



7

“ contractors are not legally required to abide by the Fair Work Act ”

The industrial relations system in Australia has undergone significant change recently with the enactment of the Fair Work Act 2009. These changes were planned to be implemented in two tranches – the first on 1 July 2009 and the second on 1 January 2010. Because of the change of government, this was not fully implemented, but the following gives a good understanding of where the legislation is headed.

The Act has several aspects to it which include:

- The establishment of a legislated set of 10 National Employment Standards
- The establishment of Modern Awards
- Revision of enterprise bargaining arrangements
- Streamlined protections for workplace rights (including discrimination and unfair dismissal)
- Two new organisations to regulate the system – Fair Work Australia and the Fair Work Ombudsman.

Key implications for employers:

- All employee wages and conditions will need to be reviewed prior to 1 January 2010 to plan for arrangements to be made by 30 June 2010.
- All wages and conditions will need to be compliant with the National Employment Standards (NES).
- Unless there is a collective agreement in place for

the employees (which will have to meet the NES), all wages and conditions will need to be compliant with applicable Modern Awards that apply to the work performed by the employee.

- All employers with 15 or more employees will now be subject to the unfair dismissal measures in the protections section of the new Act.
- There are new protections in the Act that are referred to as “Transfer of Business”. These protections seek to ensure employers who take over the employment of employees performing substantially the same work are required to maintain the industrial arrangements of the employees.
- The Fair Work Ombudsman will have the power to ensure compliance with the Act including the appointment of Fair Work Inspectors, audits and ultimately to take court action and issue fines for non-compliance.
- Employers, while not being obligated to enter into bargaining with employer representatives (like unions), will be required to bargain in good faith once they have entered into bargaining.
- Unions also have to abide by new right of entry obligations when entering employer premises.

Key implications for the engagement of Independent Contractors:

- The Fair Work Act does not seek to legislate the distinction between an independent contractor and an employee.
- This distinction will still be dictated by case law and the range of factors commonly referred to as the “multi-factor test” will remain, therefore people engaged lawfully as independent contractors are not required to abide by these terms.
- While businesses that engage independent contractors are not legally required to abide by the Fair Work Act in relation to these individuals, the ideological imperative of the laws is undeniable.
- The NES and associated Modern Awards are more than likely to become enshrined in case law as a de-facto “community standard” and form a part of the backdrop of case law as it develops – and this should be kept in mind when making independent agreements.
- Sham contracting provisions of the Independent Contractors Act that previously existed in the Workplace Relations Act to allow interaction between the Acts have been carried over into the Fair Work Act.
- The Fair Work Ombudsman has been given new powers to investigate workplace arrangements including independent contracts to ensure they meet both the Fair Work Act and the Independent Contractors Act. The Ombudsman will have the power to prosecute sham contracting arrangements.
- The transfer of business provisions mean that employees taken on under this scenario could be automatically engaged as employees based on the status they enjoyed with the previous employer.



Best Practice Contingent Workforce Management



8

“ The Government in office fluctuates from supporting industry and contracting, to favouring employment to collect more tax, depending on the amount of social security they can collect and have to pay out ”

Best practice is always a moving target and the White Paper in Appendix A is an example of how it looked in 2009.

Currently, there is a strong push towards cost savings and focus on retaining good staff. It is far more effective to retain staff than to recruit and train new staff. This applies equally in the Contingent Workforce (CW) space as well. In the past, most corporations have not had visibility of their contingent workforce, hence had no consistent way of managing them effectively. Early Vendor Management Organisations assisted by rationalising the supply chain, but these companies were invariably recruitment organisations with a vested interest in earning recruitment margins. Whilst there is no doubt that they produced cost savings for corporations, these savings were often at the expense of the other agencies in the supply chain, resulting in the best candidates being offered to the competition at higher margins.

To achieve best practice in the current market, it is important to ensure that the corporate Human Resource function manages the contingent workforce skills directly and outsources the employment and payment risks. This requires building an internal talent pool, managing the recruitment process to the point of selection and on-boarding, then allowing CWM companies to facilitate employment and payment. The latter function has been prevalent in the USA for decades under the title of “Professional Employment Organisations”. These organisations provide an “Employer of Record” service and look after all the employment and labour law issues.

In all countries, there is a disconnect between labour law, tax law, governments in office, and industry because of the fundamental differences in the core objectives of each of these organisations. Labour

Departments want people “employed” and seek to pass laws around minimum payment to ensure that people are not exploited by “contracting” organisations or “sweat shops”. This is normally meant to be protection for contractors but often has a detrimental effect on high end independent contractors because these laws make them look more like employees which they clearly do not wish to be under tax law.

Tax Laws tend to try and “deem” everyone to be “employees” so that they can collect the maximum tax with the minimum effort and pass the administration on to the “employers”. They constantly pass laws and rulings like the Alienation of Personal Services Income laws, or IR35 in UK, to prevent individuals from contracting, or to make contractors look like “employees”. The Government in office fluctuates from supporting industry and contracting, to favouring employment to collect more tax, depending on the amount of social security they can collect and have to pay out.

In many European countries where social pensions are high, tax is very high (over 60% in many cases). The above factors combine to make contracting extremely difficult because of the financial strains being created by an ageing population. Conversely, industry is relying more and more on contingent and contract workforces to stay in business and compete in a global market.

In short, this area is a minefield of legislation that is getting more and more complex every day. The reality is that CW's are growing at a rate of 15-25% p.a. whereas permanent employment is only growing at between 1-8% p.a. CW is the future of employment as corporations are forced to become globally competitive and spread different tasks to areas where they are most effectively delivered. Telesales Centres are a good example of this.

With all the above variables in play, a plethora of organisations and solutions with acronyms like MSP (Managed Service Providers), RPO (Recruitment Process Outsourcing), RMS (Recruitment Management Systems), VMS (Vendor Management Systems), VMO (Vendor Management Organisation), CWMC (Contingent Workforce Management Company) have evolved. Each provides a solution in a part of the problem domain but very few cover all aspects of the solution in a flexible manner. Because of underlying technology, each provider is limited to technology in their offering, hence corporations are tending to pick and choose partial solutions and then cobble these together.

Typically, an RPO system that is designed to manage hundreds of applicants to a job advertisement is not much use when there no applicants, so a proactive search RPO is the required solution. Similarly, organisations often have diverse requirements and there is realistically no “one size fits all” solution. The single most important component is to select is a vendor neutral Service Layer that is able to then select and implement the most suitable technology for each problem domain. Most technology has been developed to address permanent recruitment, as this is where the traditional market has been.

Very few suppliers to corporations cater for the building of internal talent pools that the corporation can own and develop as their own because this is contrary to their business model. None of these systems provide the transactional part of tax effective payroll solutions.

With the advent of social media, job boards and tools to pro-actively search these, corporations can now attract and find much of their talent requirements quite easily today. Recruitment agencies still have a very valid role in filling those hard to find positions and specific specialists. Simple and effective use of technology can save organisations huge amounts of money in the recruitment space, provided that they have systems to handle the requisitions, various processes required to on-boarding and payment of Contingent Workers. Use and integration of these technologies and selecting the best combination of tools is a complex area best left to specialists.

Similarly, the implementation of these systems is absolutely critical to the success of the investment. Effective application of experienced consultants and specialists in talent pool building is recommended to ensure that there is cross corporate buy in and full commitment to making an end to end “job requisition to payroll” solution work. The “service layer” that implements the solution is the key to a “Best Practice” solution.



Global Contracting



9

“ You will be earning more and paying less tax overseas than you would be in Australia. This could be the opportunity of a lifetime ”

Australians are well known for their enjoyment of international travel. They are also generally sought after in most countries for their skills, honesty and positive work ethic. This has led to a vast number of Australians working in many countries scattered around the globe. These Australians are often specialists in their field, or soon become invaluable to the companies they serve, and end up working internationally for extended periods of time. This phenomenon is likely to grow as the world economies bottom out and stabilise.

In today's economy, flexible workforces and controllable costs are favoured by corporations. Australians have been working internationally for many years. In fact, Australians truly lead the way as a global and flexible workforce and because they are seen as part of Australasia they are particularly favoured in Asian countries.

This creates huge opportunities for skilled Australians that are mobile and can work globally. Not only is this lucrative, it allows individuals to plan their overseas travel and work to maximise their opportunities, income and personal savings. Most often, you will be earning more and paying less tax overseas than you would be in Australia. This could be the opportunity of a lifetime to set yourself up for the future! Not only will you broaden your experiences and make yourself more employable on your return, it also gives you the option to create some smart and tax effective investments whilst you are abroad.

To take advantage of the overseas experience, you need to understand the timelines and opportunities. If you will be away for more than one tax year, you can benefit from accumulating capital overseas, as there is no capital gain on these funds. It is important that you ensure your tax affairs are in order on your departure, and advise the Australian tax office that you plan to be overseas for an indefinite period. The longer you are away, the more financially beneficial this could be for you. If you have a spouse who will accompany you, double income

can accelerate wealth creation. To gain control of your financial future, you need to maximise your savings, and invest these wisely. It is NOT about what you earn, it is about how much you keep. So take control of your spending and focus on investment for the future. A holiday will not buy a house, but a house will buy a holiday. Balance today's enjoyments with tomorrow's lifestyle. Most governments will run out of social security money before your reach retirement age so it would be prudent for you to create your own retirement fund. In Australia, you are very fortunate in being able to do so, either by contributing to your selected fund or by creating your own self-managed fund.

Plan carefully, avoid tax schemes and invest in tax effective solid future investments. Tax schemes are generally arrangements that take advantage of anomalies in tax law or interpretation of these laws. The Australian Tax Office can, and will, always attack and close down such anomalies when discovered. If it is too good to be true – it probably is. Traditionally property and blue chip shares have always provided long term returns in Australia, even through market crashes. You would be well advised to speak to an international tax planner before departure to ensure you have a smart structure that will maximise your long term benefits. The following may provide some food for thought that may prompt the kind of questions you should be asking an advisor.

As mentioned, you need to check out of the Australian tax system on departure. Also advise your bank and stockbroker that you are non-resident as you will need to have (10%) non-resident tax deducted at source. The balance of the interest earned is free of tax or capital gains. Dividends are taxable at 15% (in countries that have reciprocal tax arrangements) or 30% so if the dividends are franked, you may be losing out on some tax benefit. Some capital gains may apply to assets, which will be deemed to be “sold”

when you leave Australia, and “bought” when you return. This does not include your property. Investment properties still attract capital gain when sold, but your principal residence can be sold up to six years later with zero capital gains tax, even if it has been rented out! This is a great benefit, and should be carefully considered when planning an overseas experience. For a property to be your “principal residence” you need to have occupied it for the 12 months prior to departure.

The Higher Education Scheme (HECS) debt accumulated by many university students is automatically collected in Australia as soon as your income exceeds a certain amount (\$36,700) but this debt could be reduced if you have tax losses from an Australian rental property. Other tax losses will also accumulate in your absence and can then be offset against taxable income on your return. Make yourself fully aware of these tax issues and plan according to your circumstances.

The application of savings and excess cash whilst working as an expatriate in other countries should be carefully considered. Debt reduction is the first and most important objective. Starting with “bad” debt, which is debt that does not generate income, it is prudent to discharge credit card and personal loans as soon as possible. This is then followed by “lifestyle” debt, being debt on vacant land or holiday homes that are not income producing. Debt on investment property can be offset against rental income received from the property, so it is best to balance these to minimise tax on your Australian assets during your absence.

Even if these produce a negative return because the rental is less than the mortgage, any tax loss here is offset against future tax payable, so this is similar to a forced saving that can benefit you long after you return to Australia. Bear in mind, should your assets become substantial, you may wish to investigate creating a family trust to protect them and balance your tax. As always, get professional advice before acting.

By careful planning you can achieve both tax savings and top income, and your overseas experience could well be cash positive rather than a financial drain. Ensure you speak to the experts BEFORE you travel to maximise this opportunity. Every country varies in its tax laws and treatment of contract workers.

Tax authorities around the world have individually and collectively worked towards making it extremely difficult to work as a consultant or contract professional thus minimising tax paid. In Ireland, the Employment Status Group (set up under the Program for Prosperity and Fairness) has published guidelines of what constitutes an “employee” for tax purposes, as opposed to a “self employed” business owner. These guidelines are similar to those used in the United Kingdom IR35 legislation, and the Australian Ralph Report, which led to the Alienation of Personal Services Income (APSI) legislation down under.

In short, it is difficult to justify running a “business” if there is little or no financial risk, you are under the direct control of someone else, you work set hours and are paid for these, and you do not employ others who can carry out the tasks. In most cases, such “self employed” consultants or “contractors” will be viewed as an employee of the principle organisation and be taxed as such.

Similarly, labour laws around the world, and in particular in many EU countries, also attempt to classify independent consultants and freelance workers as “employees” to spread the social security burden, and minimise the risk of employers exploiting workers. Often, labour laws and tax laws conflict and contradict each other, but always the revenue collectors can “deem” structures to be taxable at the top rate to suit their tax collection objectives.

To understand all the variables is an impossible task, and the following is intended as a guide only. As legislation is continually revised and updated, some of the information may be out of date. We suggest that you consult the expert global Contingent and Contractor Management companies to get the current detail.

GLOBAL CONTRACTING AND TAX FRIENDLY COUNTRIES

Many would say that “tax” and “friendly” are two mutually exclusive words. This would appear to be the case in most countries. Many governments recognise the need to attract professionals, and have made visa acquisition simpler to facilitate this, but have failed to advise their tax collectors that these highly-mobile project-driven individuals are desired citizens and expatriates. The application and processing of visas is a very specialised area, and is best left to those who know the rules. Suffice to say that contracting is a lucrative option to most professionals and specialists in many fields, and the appropriate visas are generally obtainable (see web references at end).

Because of the nature of client requirements, the Information Technology industry has traditionally been project driven, leading to a great demand for contractors and specialists. More and more accountants and lawyers are now being offered contract positions.

Conversely, in the past two years, most revenue and tax collectors around the world have chosen to target the contractor sector. In the UK, IR35 legislation has been introduced, in Australia there has been the Alienation of Personal Services Income Act 2000, which accompanied the GST legislation, and in New Zealand we have seen similar Avoidance Legislation.

Australia

Income tax in Australia is applied at various levels. The top marginal rate is 47% kicking in at \$60,000 (+/-US\$30,000), and a 1.5% and 2.5% Medicare levy applies. Australia also has a Goods and Services Tax of 10%. It does not end here. Superannuation (pension) is compulsory, at 8% in 2001 and 9% in 2003 and beyond. This contribution is concessional tax at 15% on contribution and 15% on withdrawal, EXCEPT for high income earners. The tax on superannuation increases by 1% for every \$1,000 earned over \$78,000, and peaks at 30% on all contributions for income earners of over \$93,000 p.a. This compulsory Superannuation has to remain in the country until your retirement age of 60 plus (that is if there is any left after administration fees are deducted).

In June 2000, Australia introduced a new tax system, based on the “Ralph Report” prepared for government. An integral part of this legislation is the Alienation of Personal Services Income Bill, which effectively prevents contractors who derive their income from their “own personal exertion” from gaining any advantage by using a company, sole trader or similar structure to reduce tax liabilities.

Small contractor companies, where the bulk of the income is earned from the personal exertion of the director/shareholder, are being severely disadvantaged. The Alienation of Personal Services Income Bill 2000 legislates that if 80% of your income is from a single source, then you will be treated as a “Personal Services Entity” (PSE) and this limits the expenses you are able to claim to less than those of a PAYG employee. In the application of this test, they look at the end user as the “employer” NOT the agency. Working for multiple agencies at the same end user does not get around the legislation.

If you are able to pass the 80/20 test, you ALSO have to pass other tests.

The “Enterprise Test” to apply for registration for GST requires:

- That you control the services offered, including the risk
- That you have multiple concurrent clients
- That you have “substantial” investment in equipment.

And then the business entity needs to pass ONE of these tests:

- Unrelated client
- A personal services BUSINESS must have multiple and unrelated clients. This negates intercompany invoicing and use of investment income.
- Employee test
- A personal services BUSINESS must employ people to deliver the service other than the principals

OR

- Separate business premises test.
- A personal services BUSINESS is expected to have its own premises, not a home office or a serviced office.

Note: This legislation and these tests are well drafted and will not allow evasion by simply joining with others (there are specific streaming provisions which prevent this option) or simple evasion tactics.

Contractors who choose to use their own companies will need to undertake a self-evaluation. They are personally liable for severe penalties if they get this wrong.

There is no doubt that the situation is now far more complex, and the options for tax minimisation have been significantly reduced. The preparation of the quarterly BAS statements has been a time consuming and confusing burden. The Australian Tax Office has removed the option for individual contractors to gain any advantage from running their own company. The Enterprise Test and the Personal Exertion tests will

negate many personal services companies, if not in the first round, then in subsequent audits.

United Kingdom

The top marginal tax rate in the UK is 40% and kicks in at £33,935 (+/-US\$50,000). Coupled with a 12% employer contribution to National Insurance, a 17.5% Value Added Tax on all purchases, capital gains tax and inheritance tax. The UK is one of the most unfriendly tax regimes in English speaking Western world.

In March 1999, the UK budget announced new rules for companies that provided the services of named individuals to clients (often via agencies). These rules (IR35), introduced in April 2000, effectively stopped individuals receiving their pay in the form of dividends. This, combined with a severe limitation on expense claims available has had a major impact on contractor take-home pay.

The rules are complicated and involve no real tested legislation. The backbone of the new regime is driven by case law. Each contract that a contractor works will need to be considered to determine whether or not it falls within the new rules.

Anyone who is working via an intermediary, such as a company or partnership, will be caught in these rulings if they fail the IR35 test. This test is whether the person would be an “employee” if they were contracting direct with the “client”, rather than using an intermediary. If the person is treated as being an “employee” they will have to perform a calculation taking income from “relevant engagements” less any allowable deductions.

Contractors with their own companies will need to undertake this process of determination themselves, and their company is at risk if they get the answer wrong. Where a contractor works on two or more contracts in a particular tax year the accounting becomes complicated, particularly if some contracts are within the scope of IR35 and some are not. One of the main factors in determining whether the contract falls within IR35 is the wording of the contract.

Even if your contract is considered outside the scope of IR35, you may not be able to benefit from all the advantages of running your own business. You will need to get expert advice to ensure that you can maximise your income within the constraints of IR35.

Working with IR35

There is little doubt that contractors trading in their own limited companies will have to radically rethink how they structure for the IR35. The impact of the proposals is that many contractors will contribute Pay-As-You-Earn tax and National Insurance on ALL their contractual income, subject to minimal allowances. One-person service companies were previously able to benefit from the loophole of paying its principals in dividends rather than salaries, and the IR35 rulings are aimed at removing this.

The law does not define the term “employee” and each case will be decided on its own merit, however, if you answer “yes” to the following questions, you are probably an employee and your contract income will be subject to IR35:

- Do you undertake the work yourself rather than hire someone else to do it on your behalf?
- Does another person have the authority to tell you what to do or how to do it at any time?
- Do you work at the premises of the person you work for, or a place nominated by them?
- Are you paid by the hour, day, week or month?
- Do you work a set number of hours?
- Do you receive overtime pay?

It is important to understand that the intent of the proposed new rules is to remove the scope for avoidance of tax and National Insurance through the use of intermediaries, and specifically, the misuse of dividend payments. Many UK umbrella companies use partnerships or private company structures to facilitate the payment of dividends to contractors or their spouses. This is where the main thrust of such anti-avoidance legislation is being aimed.

Self-employed operators must meet certain criteria to operate outside of IR35 rules:

- They should have the final say on how their business is run
- They should be liable for losses as well as profits
- They should be liable for rectifying unsatisfactory work in their own time and at their own expense
- They should provide the main items of equipment required to undertake the work
- They should have the option of hiring people on their own terms to do the work they have taken on
- These hired people should be paid by the company

Most contractors will not meet these criteria on most contracts. The judicial review is expected to provide some minor reforms, and strengthen the case for the collection of National Insurance. The additional revenue produced in 2000/2001 for both Inland Revenue and National Insurance far exceeded expectations and they are unlikely to give this up. Rather, we expect to see a tightening of the application of these rules.

Europe

All non-EU citizens require a work permit to work in Europe. In the majority of European countries, the only way to obtain a work permit is to be employed by a local company that can provide sponsorship of the work permit. Non-EU contractors wanting to work in Europe will normally use the services of a management company to provide an employment structure and obtain work permit sponsorship.

Independent contractors working under an employed structure provided by a management company will normally incur the burden of local personal income taxes as well as employee's and employer's social security contributions. The additional burden of employer's social security and high rates of tax across Europe result in a low return of income. Most management companies will offer salary packaging options that allow the contractor to increase the return on income.

A contractor who is eligible for EU citizenship through ancestry or dual nationality does not require a work permit to work in Europe and, therefore, can work as an independent contractor. Throughout Europe the term used to describe an independent worker is "Freelancer" or "Sole Trader".

Working as a Freelancer/Sole Trader is the most tax efficient option for contractors in Europe. The obvious advantage is that the contractor does not incur the employers and employees social security burden that is suffered under the employed structure. In some countries, Freelancers/Sole Traders are exempt for certain social security contributions. There is also the added advantage of being able to claim all genuine business expenses. The allowable expenses working as a Freelancer/Sole Trader are more generous than working as an employee.

In some European countries there is a specific criterion that has to be fulfilled in order to qualify as a Freelancer/Sole Trader. This can be anything from the type of work carried out, minimum salary requirement, previous experience in managing a business, degree,

level of education and more. We strongly advise contractors who are planning to work in Europe to seek professional advice on the most suitable employment structure before arriving in the country of work.

When working overseas, expatriates should consider additional medical insurance for medical repatriation.

TAXES ACROSS EUROPE

Austria

Personal income tax in Austria is applied at progressive rates. The top rate of tax is 50% kicking in at EUR 60,000. Employees receive a 13th and 14th month salary which must be allowed for out of the annual salary. Social security contributions are higher in Austria at a total rate of 39.9% (employer 21.83% and employee 18.07%). There is also an additional 4.5% contribution to the Family Burdens Equalisation Levy and a municipal tax on payroll at 3% of the monthly salary. In addition, there is a contribution to the Chamber of Commerce at a rate of 0.04% of gross salary paid and a contribution to the employee care fund at the rate of 1.53% on gross monthly salary.

To make working in Austria more attractive to the foreign worker Austria has introduced a number of special rulings for expatriates that provides tax-free allowances for working overseas such as a housing allowance, moving expenses and school fees.

Belgium

Tax and social security rates in Belgium are high, with tax rates varying from 25-50%. The top rate of tax (50%) is applied to income over EUR 34,330. Residents of Belgium must all pay communal tax payable. Employees receive a 13th and 14th month salary which must be allowed for out of the annual salary. Employee social security contributions are fixed at 13.07% of the gross salary. Employer contributions vary at around 35% of the gross salary. Compulsory social security contributions are tax deductible. Belgium does have

a number of deductions that can be applied to the gross income before tax is calculated based on the individual's personal circumstances, such as social security deductions and personal exemptions (standard tax deduction) for each tax payer. It is also possible for married couples to split income if only one spouse is working so that income is taxed at a lower rate.

Bulgaria

In Bulgaria a flat rate of 10% applies to all personal income. The total social security contribution is 31.1-31.7% (18.1-18.7% employer contributions and 13% employee contribution). There is an additional health insurance contribution of which the employer contribution is 4.8% and the employee contribution is 3.2%.

Czech Republic

The personal income tax rate in the Czech Republic is 15%. Employer social security contributions are 25% of the gross salary, with an additional 9% to cover health insurance. Employee contributions are 6.5% with an additional 4.5% to cover health insurance. The Czech Republic offers a tax credit of CZK 28,840.

Denmark

Personal income tax in Denmark is extremely high. Personal income tax rates are progressive up to 59%. Contractors with an independent business may choose to enter a special tax system whereby, all business income is taxed at a flat rate of 25% as long as the income is kept in the business. There is also an additional burden of municipality tax (local tax), which is calculated on taxable income at a flat rate dependent on the municipality. The average municipality is 24.82%. An additional tax of 8% is payable to cover health tax. Members of the church will incur an additional flat rate of tax dependent on the municipality, with an average rate of 0.72%. State and local taxes on income are not deductible for tax purposes. With regard

to social security contributions, there are a number of labour market contributions to be covered. The AM-bidrag to be paid by the employee is 8% of gross salary, and the ATP-bidrag to be paid by the employee is DKK 1,080 per annum. The ATP-bidrag to be paid by the employer is DKK 2,160 per annum. The work injury insurance is paid by the employer based on the agreement with the insurance company. ATP and AM-bidrag are tax deductible for the employee. A Maternity Fund has been introduced and requires the employer to pay a contribution of DKK 936 per year for each fully employed individual being paid a monthly salary.

Employees may be entitled to deduct travel expenses, subscriptions to professional associations, necessary business literature, and tools from their gross income before income tax is calculated. An employment allowance is also available. The allowance amounts to 4.25% of the employment income. However, it cannot exceed DKK 13,600. It is also possible to deduct travel expenses between home and work. If the total distance per day is less than 25 kilometres, no deduction can be made.

Expatriates working temporarily in Denmark may be granted an annual allowance for extra living costs equal to the lesser of DKK 8,000 plus 5% of gross earned income or 25% of gross earned income. This allowance may be granted for the first two years and provided the expatriate intends to stay in Denmark for no more than three years.

Expatriates who are employed in Denmark may be able to apply for a special tax rate of 25% or 33%. A number of conditions must be met. The monthly salary after deduction of Danish social security contributions must exceed DKK 63,800. The tax rate of 25% applies for the first 36 months only. The 33% applies for the first 60 months. The employee's stay in Denmark may be longer, but after the 36-month/60-month period the employee's income is taxed at ordinary rates.

A personal allowance of DKK 42,900 is granted on income tax payable at ordinary rates.

Finland

Personal income tax rates in Finland are progressive starting at 6.5% and progressing to 30%. There are additional taxes such as church tax, which varies between 1% and 2.25% depending on the parish concerned. Municipal tax varies from 16.25-21% depending on municipality. With regard to social security, a sickness insurance premium payable to the tax authorities is divided in two classes comprising a daily allowance premium 0.93% and a medicare premium of 1.47%. Only the daily allowance premium is deductible in the individual taxation. In addition, there is also an employee pension insurance contribution (4.5% or 5.7% for employees of age 53 years or more) and unemployment insurance contribution (0.4%).

There is a special expatriate tax rate, which is a flat rate of 35% and includes social security contributions.

Business expenses can be offset against taxable income. The maximum allowance for travel to and from work is EUR 7,000 per annum. Only travel by the least expensive means is usually tax deductible. Other genuine business expenses are also deductible such as tools, business travel, professional subscriptions etc.

France

The top rate of tax in France is 40%. Tax is payable at the end of the year when an annual tax return is filed. Social security must be paid on a monthly basis. Social surcharges on personal income amount to 8%. Employees are liable for social security on income at a rate of between 20% and 23%.

Employees can opt for a standard 10% business expense allowance or can claim expenses based on itemised business expenses supported with receipts.

Germany

German income tax has a top rate of 45%. There is a tax-free bracket up to EUR 7,664, above this tax kicks in at a rate of 15% progressing to 42% and finally

45% on all income over EUR 250,000. There is an additional church tax which varies between 8% and 9%. However, when registering if the individual chooses to have no religion then no church tax is applied. There is a solidarity surcharge tax at 5.5%. The surcharge is imposed on all individuals incomes.

Greece

Personal income tax rates in Greece are progressive with a top rate of tax at 40%. Employers are required to contribute 28.06% to the social security authorities and employees must contribute 16% of their gross income. Social security is tax deductible.

In general, business expenses are not allowable. Deductions as business expenses should be reimbursed by the employer.

Hungary

There are two personal income tax brackets in Hungary 17% and 32%. 32% kicks in at HUF 850,000. Social security contributions are payable by the employer at 28.5% covering pension, health insurance and training and by the employee at 17% covering pension, health insurance and unemployment benefit. There are no personal tax deductions or credits in Hungary.

Italy

The lowest rate of income tax in Italy is 23% progressing to a maximum of 43%. There are additional regional (0.9-1.4%) and municipal taxes (0-0.5%). Employers' social security contributions are between 32% and 38% on gross earnings. Employees' contributions are 10% on gross earnings. Social security contributions are tax deductible, as are a number of expenses depending on the individual's personal circumstances. Standard and family tax credits are granted in Italy.

Latvia

Personal income tax was reduced by 1% from 26% in 2010 to 25% in 2011. It is believed that the same rate will be applied to self-employed activities (currently taxed at 15%). Social security rates vary depending on the employment structure and employer contributions are from 20-25%. Employee contributions vary from 9-28.04%. Social security contributions are tax deductible. Personal allowances are also granted depending on the individual's personal status.

Luxembourg

Income is taxed at progressive rates in Luxembourg. The minimum tax bracket is 8% on income in excess of EUR 11,265. The maximum tax bracket is 38% on income in excess of EUR 39,885. There is an additional solidarity tax of 2.5%. Income tax liability in Luxembourg is based on the individual's personal circumstance. There are three tax classes depending on the individual's circumstance. Class 1 for single people, Class 2 for married people (including civil partners) and Class 1a for single people with children. Employees are liable for social security at a rate of 10.95%.

Income related expenses are deductible.

Malta

Malta's tax system has been updated in order to reflect certain points raised by the EU. These amendments have resulted in enhancements being made to the Maltese tax system which have in turn resulted in making the tax system more attractive from an international perspective. Income is taxed at progressive rates from 15-35%. With the top rate of tax kicking in at EUR 19,501 for single tax payers and EUR 28,701 for married tax payers. There is a special tax regime for expatriates who obtain a residence scheme certificate. A residence scheme certificate entitles the holder to a special flat of tax at 15%. Employees earning not more than EUR 16,813 per year pay 10% social security contributions. Employees earning over EUR16,813 per

year pay EUR 32.33 per week, which is matched by the employer.

Only business expenses wholly incurred by the employer may be reimbursed by the employer. There are no tax credits.

Netherlands

The Netherlands was one of the first European countries to recognise the expatriate contractor market and as a result introduced an expatriate tax scheme. Under the tax scheme a contractor may qualify to benefit from the 30% allowance. If granted the 30% allowance the first 30% of the contractor's earnings are tax free with only the remaining 70% taxable. In addition to this there are also a number of expenses that can be claimed depending on the individual's personal circumstance. As a result of the expatriate scheme, a contractor can still achieve an acceptable return on income even with the high tax and social security rates in the Netherlands.

The top rate of tax in the Netherlands is 52%.

Employee insurance contributions and national insurance tax are levied on residents and non-residents under a number of different regulations.

Under the national insurance tax regulations, tax is levied on income up to a maximum of \$32,127. At present, the tax is capped at \$10,007 per annum. From this amount several levy rebates may be deducted varying from \$181 to \$2,114.

Under the employee insurance regulations, contributions are to be paid on income up to a maximum of \$47,802. The contribution rate depends on the line of industry the employee belongs to, but on average the contributions that are fully paid by the employer amount to \$4,996.

In principle all residents of the Netherlands and all employees who are subject to Dutch wage tax, are compulsorily covered under the Dutch Health Insurance Act (Zorgverzekeringswet) and are required to have a statutory health insurance policy. For employees the

contribution will consist of:

- A nominal contribution (approximately EUR 1,074), to be paid to the health insurance company; and,
- An income-related contribution (6.9%, with a maximum of EUR 2,233), to be paid to the Dutch Revenue. In most cases the employer will be obliged to fully reimburse the income-related contribution. The employer's contribution is considered a taxable benefit for the employee.

There are a number of allowable expenses that can be offset against the contractor's tax liability.

Norway

The Norwegian tax system has progressive tax rates. The ordinary tax rate is 28% on all taxable income. A computation deduction of NOK 40,800 could be applied – double if married filing jointly (i.e. the spouse has no income). In addition a minimum deduction of maximum NOK 70,350 as described above will apply. An additional tax (state tax) on salary income, including benefits-in-kind, is assessed. Top tax is 9% of earned income between NOK 441,000 and NOK 716,600 and 12% on income exceeding NOK 716,600. Employees are liable for 7.8% social security contributions and the employer's contribution is 14.1% of the gross salary paid to the employee. A standard deduction to cover expenses connected with the generation of income, calculated on the basis of salaries and other types of income for employees is 36% of the base subject to a minimum of NOK 31,800 and a maximum of NOK 70,350. The minimum allowance does not cover additional expenses incurred whilst living away from home and travel expenses. A special 10% deduction can be claimed by expatriates staying less than two years in Norway. The deduction is applied to earned income for the national and municipal tax (not for the surtax which is levied on gross income). The maximum deduction is NOK 40,000 and replaces all other deductions except the minimum allowance and personal allowances.

Poland

Poland has a top tax rate of 32%. A special flat rate of tax of 19% can be applied to individuals running a business. Income tax must be paid every month in advance and then adjusted at the end of the year. Employer's social security contributions are between 17.48% and 20.41%. The employee's contribution is 13.71% of gross salary. Social security contributions are tax deductible. There are no special rules for expats. However, a number of expenses can be offset against taxable income.

Portugal

In 2009 a new tax regime for non-habitual tax residents was introduced in order to attract highly qualified and specialist foreign workers. Individuals who would normally be considered as residents for tax purposes would be able to apply for the new tax regime, which allows them to benefit from a flat tax rate of 20% if:

- they have not been tax residents in the last five years in Portugal
- they register with the Portuguese tax authorities as non-habitual residents – this option would be valid for 10 years
- they would be considered as tax residents in each of the 10 years according to the domestic rules
- their job consists of a high-value-added activity of a scientific, technological or artistic nature.

Portugal offers tax credits depending on the individual's personal status. The lowest income tax bracket is 10.50% and the highest 42%. Social security contributions are 23.75% for employers on gross earnings and 11.00% for employees on gross earnings.

Romania

Romania operates a flat rate tax system at a rate of 16%. Employee contributions for social security are 10.5% with additional contributions of 0.5% for the unemployment fund and 5.5% for the health fund. Employer contributions to the social security fund are between 20.8%, 25.8% and 30.8% depending on working conditions, 5.2% to the health fund, a capped 0.85% contribution for medical leave, guarantee fund 0.25% of the salary fund, 0.5% to the unemployment fund, 0.15-0.85% to the work accidents insurance and 0.25% or 0.75% labour office commission. Social security contributions are tax deductible.

Slovak Republic

Tax legislation in the Slovak Republic is still in development stages and is therefore subject to frequent changes. Currently in the Slovak Republic there is a flat rate of tax at 19%.

Employee's health insurance and social security contributions total 13.4% of gross salary, but due to caps on the amounts, the total contribution does not exceed EUR 333.06 per month for the period from 1 January 2010 to 30 June 2010.

Employer's health insurance and social security contributions total 34.4% of gross salary, but due to caps on the amounts, the total contribution does not exceed EUR 892.40 (for the period from 1 January to 30 June 2010). There are also injury insurance contributions of 0.8% of the employee's total salary costs per month.

A personal allowance is given to tax payers in the Slovak Republic and a tax bonus is given to tax payers with dependent children.

Slovenia

Personal allowances are granted based on the level of income received. These are EUR 5,113.35 for income up to EUR 8,557.30, EUR 4,082.35 for income between

EUR 8,557.30 and EUR 9,897.60 and EUR 3,051.35 for income in excess of EUR 9,897.60. The lowest income tax bracket is 16% for earnings up to EUR 7,410 and the highest rate is 41% kicking in at EUR 14,820. Individuals working on a service or single work contract are liable for special rate tax at a rate of 25%. Social security contributions must also be paid with employers contributing 16.10% and employees 22.10%.

Spain

Income tax rates in Spain start at 24% on income up to EUR 17,707.20 and rise to 43% on income over EUR 53,407.20. A tax rule for expatriates in Spain who are employed by a Spanish company or by a foreign company with a permanent establishment in Spain has been in force since 1 January 2004. These expatriates may choose to be subject to tax either at progressive rates with deduction of certain expenses and allowances, or as non-resident taxpayers at a flat tax rate of 24% with no deduction of expenses or allowances.

Social security contributions are payable on basic salaries to a maximum of \$3,074.10 per month, depending on the individual's category. The general percentage contribution rates as at January 2008 are 4.70% for employees, depending on the type of contract and 23.60% for employers. Social security contributions are tax deductible.

Only expenses that are necessary to obtain an income are deductible.

Tax payers may be granted a tax credit depending on their personal status.

Sweden

Tax and social security rates in Sweden are extremely high. Non-resident tax payers not staying in Sweden for more than 183 days can opt to pay SINK tax at a rate of 25% including social security. Standard personal income tax is comprised of two major parts: a municipal tax rate of between 30-35% and a national tax rate of between 20- 25%. The general social security percentage contribution is around 32%.

All expenses related to fulfilling the employment agreement are deductible such as travel expenses, car expenses, living allowances, business trips, tools, professional subscriptions etc. However, the expenses must be wholly incurred for employment purposes. Under certain conditions, expenses for travel between home and place of work, based on the cheapest means of public transport or, if a private car or a company car is used, on a fixed amount per kilometre. Only the part of the cost exceeding SEK 9,000 is deductible. There is also a basic allowance given on taxable income of between SEK 12,600 to SEK 33,000.

New Zealand

New Zealand had one of the simpler tax systems until recently when both personal and company tax were capped at 33% and a Goods and Services Tax of 12.5% applied. The recent introduction of a higher rate of personal tax (39% from NZ\$60,000, +/-US\$26,000) compared to company tax (33%) opened the way for tax avoidance, which in turn has created a need for the new Avoidance Legislation, introduced in the 2001 tax year. Personal service companies are under attack from the tax department in all countries. New Zealand is no exception, and the Inland Revenue Department is looking to contractors to provide additional revenue. They have obviously read the Ralph Report (Review of Business Taxation) prepared for the Australian government and have chosen to implement some of those recommendations. In NZ, the Employment Relations Bill is further complicating the contracting market.

NZ Avoidance Legislation

On the 30th March 2000, the Government released details of new avoidance rules intended to prevent high-income earners from avoiding the 39% tax rate. The proposed legislation introduces an income attribution rule. This means that income derived by the company, trust or partnership (referred to as the “interposed entity”) will be required to be attributed as income of the individual who provided the service and only limited

expenses are claimable as for a PAYE employee.

The Income Attribution Rule will apply where:

- An entity is interposed between a service purchaser (client) and the individual who provides the service (e.g. a company or sole trader);
- The interposed entity and the individual are related;
- During the income year, the interposed entity receives 80% or more of its income from a single source, or associated sources;
- During the income year, 80% or more of the income relates to the personal services provided by an individual and/or associated persons; and
- Significant and substantial assets do not form a structural part of the income earning process of the interposed entity (i.e. major plant and equipment).

There is little doubt that NZ contractors trading in their own limited companies will also have to radically rethink how they structure for the Avoidance Legislation. This legislation will be BACKDATED to April 2000. The impact of the new legislation is that many contractors will pay PAYE tax on ALL their contractual income, subject to minimal expense allowances. One-person service companies have traditionally been able to benefit from income splitting and business expense claims for all related expenses. This legislation will negate those avenues and options.

Again, it is important to understand that the intent of the proposed new rules is to remove the scope for avoidance of tax through the use of intermediaries, and specifically, income splitting to reduce tax liabilities. Many contractors use company structures to facilitate the payment of salaries or dividends to family trusts or their spouses. This is where the main thrust of the avoidance legislation is aimed. Evasion tactics will not work for many in the long run.

USA

Contracting in the USA and Canada is not as prevalent as it is in Europe, UK and Australia. Both the United States and Canada have complex tax systems, affecting tax contractors at both a Federal and State level (most States). The individual States also apply sales taxes at a retail level. USA State payroll or income taxes vary and are applied on taxable income. Nevada, Delaware and Washington are some of the favoured States to register companies, because they do not have State payroll taxes.

The Inland Revenue Service (IRS), is world famous for its tax law enforcement, hence in the USA most people have tax lawyers as well as accountants. The tax levied on earnings below US\$64,000 is from 15% up to 30% then 35% from US\$142,000 and 38.6% over US\$308,000. Add to this 12.4% social security and 2.9% Medicare and you are getting up there again. A major advantage for residents of the USA is that a home mortgage is deductible from gross income prior to tax. Another bonus is that American citizens are allowed to earn up to US\$70,000 p.a. tax-free if they work outside of the USA in any year.

More of a problem for contractors in this regime is the clamping down on the definition of “contractor”. Labour laws are being modified to force contractors back into the labour force to minimise the exploitation of illegal and cheaper labour. These laws will force contractors into permanent positions.

South Africa

South African tax regime does not specifically target contractors. The Receiver of Revenue is more focussed on labour hire firms who use contracting as a means of exploiting cheap labour. Professional contractors are often employed by agencies that in turn contract them out. The top marginal tax rate is 45% over R100,000 (+/-US\$12,500) plus they have a Value Added Tax of 12%.

Hong Kong

Hong Kong is not a “tax haven”, but does have a low tax regime. Maximum income tax is 17% at HK\$125,000 (+/-US\$16,500) or employees can opt for a flat 15% tax. This is very attractive if one is working for short terms around the world. It would make sense for migratory contractors to operate out of Hong Kong if they are not caught up in another country’s tax system, i.e. are working in most countries for less than 180 days.

Mainland China

China is a very different environment, combining high tax and a dubious currency. The local currency (Renmin Yinhang or RMB for short) is not traded on the world market, and it is not possible to convert RMB to other currencies in China or transfer it to another country. It is possible to covert to US\$ on the black market, but costly and risky. Assuming you have not been landed with counterfeit currency, smuggling out large amounts of US dollar is illegal and it will be confiscated if found.

Taxes for expatriates are fairly steep in comparison to Hong Kong, around 30% from US\$60,000 p.a. and 45% top marginal rate. There is a small tax-free threshold, US\$6,000 p.a. but this hardly covers the cost of Western style accommodation or food. It is highly recommended that an all-inclusive package is negotiated to ensure food and accommodation is acceptable and affordable. It is also advisable to use a management company to assist with currency movement and management. China is a very lucrative, but volatile and complex regime where conditions can change very quickly.

TAX HAVENS AND OFFSHORE PAYMENTS

In the main, tax havens are not a safe strategy, as this is where all the tax departments constantly look for tax evasion. World banks are forcing these countries into line, and the long-term advantage of these havens is always in question. However, there are still some international management companies who will allow you to take the risk if you so choose. Running your own company here is an option, but there are fairly high risks associated with this.

Isle of Man

Whilst the Isle of Man is considered a “tax haven”, local tax is payable if you work on the island. Tax is comparatively low, 14% to £18,000, 20% above £18,000 (+/-US\$26,500) plus 10% employer and 10% employee contribution to National Insurance and 17.5% Value Added Tax on all purchases. The above tax applies only to those working on the Isle of Man. Income earned outside of the Isle of Man is not taxable in the Isle of Man. It would make sense for migratory contractors to operate out of the Isle of Mann, assuming they are not able to use Hong Kong, and provided that they are not caught up in another country’s tax system, i.e. working in most countries for less than 180 days.

Guernsey, Channel Islands, Bermuda, Luxembourg

These are all well-known tax havens and may be suitable for holding offshore savings and investments until a contractor returns to their country of permanent residence. At this stage, it may be taken into the resident country as capital. Most countries will wish to see that tax has been paid on these funds in the country earned. Tax credits are available for these taxes paid in other countries if the earnings apply to the same tax year. In some cases the overseas earnings in the same tax year will be used to determine marginal tax rates. It is important to ensure that you have checked out of your country of residency’s tax system if you are to work overseas for a period of six months or more. If this is not the case, all the worldwide earnings may be treated as income in that country.

CONTRACTING IS A WAY OF THE FUTURE

In these changing times and tough worldwide tax climate, there is little good news. The use of small one-man contracting companies is being phased out in most tax regimes. Contracting as we knew it in the past decade will remain in the past decade. The new millennium will see a far more mobile global contractor workforce to service the new global economy.

In the UK and around Europe the management companies, or umbrella companies, have had to clean up their act to provide legal structures for contractors to work through. These organisations vary greatly in their method of operation and fees charged, not to mention services offered. Should you choose to go this way, it is important to ensure that the organisation chosen does operate within the laws of the countries you are contracting in. It would also be wise to ensure that they also operate in other countries where you may wish to contract, to provide continuity. Many UK management companies have gone out of business in the past three years because of dubious practices and changes in legislation so it would be prudent to check that the directors have not been bankrupt before, and that the company has been in business for at least five years, prior to 2006 when legislation changed to minimise some of the borderline practices. If an arrangement sounds too good to be true, it probably is!

The chosen organisation should take care of all the accounting as well as ensure that you benefit from all the advantages of salary packaging so that you can maximise your income within the constraints of this new legislation. Fees range from US\$50 per week to 15% of gross income. At the end of the day, the net cash-in-hand gain is the most important factor, not the actual fee. The fees charged should be funded by tax savings, and should not come from your pocket. Care should be taken in the selection process, as this organisation could provide you with years of service in the new economy.

Contracting is alive and well in the Western world where industry is driven by supply and demand. There is an ever-growing demand for specialists in most fields. There is a shrinking population in the Western world,

and this demand for skills may never be met. The problem solving and project nature of industry today will always demand specialists for varying lengths of time on these projects and problems, making contractors a most cost effective option. At the same time contracting is challenging as well as varied and lucrative for the specialist.

The global economy continues to drive the demand for these specialists, they need to become global operators to service this demand. To keep focussed on your area of specialty, you need to outsource your administration and financial planning. It is prudent to consider international working opportunities and investment options to park funds until retirement.

Contracting is far more acceptable in most countries today. More and more professionals are realising that there is no such thing as a “permanent job”. Contracting enables professionals from all walks of life to maximise their earnings during their prime working life. It is absolutely essential that these professionals invest wisely, and an integral part of this is smart tax planning. Being aware of the tax laws around the world may enable far more effective long-term investment and financial independence.

There are not many tax friendly countries. However, if the above principles are effectively applied, contracting can provide a highly rewarding career. Smart global service companies can assist in facilitating an early retirement, but you need to take your career into your own hands and plan to operate and invest globally to maximise your opportunities.

Appendix



A

BEST PRACTICE IN CONTINGENT WORKFORCE MANAGEMENT

By Robert Collins

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About the Author

Robert Collins

Over his 30 year career managing companies, Robert Collins has been closely connected to Human Resources and HR issues.

For six years, concluding in August 2007, Robert was Managing Director of the ASX listed company Candle Australia Limited, then one of Australia's most successful recruitment and contractor management businesses.

Concurrently, for five years to June 2005, he was on the Board of the Health Insurance Commission (now Medicare Australia) which employs over 4000 staff. Previously, Robert held senior positions with the Adecco group, one of the world's largest contingent staffing organisations.

Robert is also a Fellow of the Australian Institute of Company Directors and was founding president of the Information Technology Contract and Recruitment Association. As a result of his successful career, Robert was able to retire from full time work late in 2007 and now spends his time advising companies and senior management on how to achieve higher profits through sustainable operational improvement.

Executive Notes

The current global recession has forced companies to consider methods of saving money, such as implementing hiring freezes, reducing the size of the workforce, cutting out training, reducing employee benefits and implementing other cost cutting initiatives.

With the recent focus on the war for talent giving way to the more immediate needs of lowering costs and in some cases, corporate survival, it would be easy to overlook the contingent workforce as part of the solution to both challenges. Indeed, one would be foolish to do so.

Today's employment mix comprises a diverse composition of talent from a variety of sources. Among them is the contingent workforce, a group comprising contractors, consultants, temporary workers, interim executives and so called freelancers.

Temporary workers were a post World War II phenomenon primarily used to fill vacancies due to leaves of absence such as maternity leave or illness. The use of contingent workers has grown across the industrialised world.

No longer are contingent workers found solely in light industrial or clerical roles; today, with the increase in specialisation in the workplace, even the most highly educated and specialist vocations feature a supply of contingent workers. They have become an essential part of today's labour and talent pool mix.

This ever-increasing move to a contingent workforce brings with it a multitude of challenges and in many cases risks. So how can an organisation take advantage of the flexibility and agility associated with a contingent workforce whilst protecting itself from the complexities and risks involved?

Concisely, disaggregation is the key.

The following article defines the ideal model, recognising sourcing, engagement and management as three distinct steps, each with their own responsibilities; responsibilities which in the case of sourcing and engagement ideally should be outsourced.

Introduction: The Increasing Trend

The increasing trend towards the engagement of contingent workers has been reported in many parts of the globe. In Australia, according to the ABS, around 25% of the workforce could be labelled as contingent.¹ In the US, the figure is similar.

Clearly any strategy for the ongoing engagement of a skilled workforce should not exclude this cohort. While contingent workers come in all age groups, experts observe that a typical contingent worker is in their mid to late 30s, and offers a range of skills.

Most recently there has been a marked increase in the availability of flexible workers. One key driving factor is the impact of the financial meltdown on baby boomer superannuation entitlements. The expected skills shortages have been reduced somewhat as many "would be retirees" are now back in the market, searching for part time, casual and flexible work arrangements to bolster their retirement nest egg. The contingent workforce is increasingly represented by all age demographics.

¹ Source: Australian Bureau of Statistics

But it's not just the size as a percentage of total workforce that makes the use of contingent workers attractive as part of the talent mix; most importantly the use of the contingent workforce makes good commercial sense.

The use of the contingent workforce may not only deliver projects more quickly, but does so at a lower cost. Flexibility, and all of its benefits, is the key to the trend towards an increased usage of the contingent workforce.

The war for talent is waged mainly on the permanent employment front, buoyed by global growth, skills shortages and competitors' talent retention strategies. As an industry leader, and now an enthusiastic observer, I remain amused by the fervour, promoted by "experts", to wage the war for talent.

The marked increase in permanent staff hiring, often to the exclusion of, and indifference to, contingent workers has contributed to the impact of the economic downturn on many companies.

What is most peculiar about the drive to permanent employees was, and remains, the fact that "nothing is less permanent than permanent".

I call this the new E- myth; "the employment myth".

Permanent staff are typically slower to acquire due to notice periods, and more expensive to acquire, given recruitment fees and (to the extent they applied) sign on bonuses. They are often more expensive to retain and train, and certainly more expensive to disengage.

Many permanent staff can leave with one month notice and given the rapid rise in wages, a key result of the "war", many were enticed to do so. Even with a longer notice period, there is no practical enforceable financial penalty that can be reasonably applied for breaking the moral or written employment agreement and, to the extent there was one, the hiring employer would often fund it.

Contingent workers, however, particularly professionals on contract, typically have enforceable contracts with penalties for early termination, non-performance and non-delivery of agreed outcomes – all this with no material early termination costs to the company.

If you want permanent staff, look to adding contingent workers into the mix; a contracted IT professional for example, is more likely to stay and complete agreed tasks and outcomes when they are engaged as a contingent worker.

Furthermore, if the client has managed the contingent worker well, many are prepared to stay longer term as part of your "permanent workforce". Successful organisations are increasingly reliant on these so called knowledge workers for short-term professional engagements and project-based work. Many now see them as a permanent part of their talent mix, augmenting and in some cases replacing their full-time permanent workforce.

Disaggregate Process for Best Practice

While the use of contingent workers is not new to the corporate world, with the Aberdeen Group reporting that around 74% of companies as having contingent workforce engagement programs in place for at least two years², the speed of the shift from hiring permanent staff to leveraging contract staff has caught many organisations under prepared.

According to their recent study, there is a distinct gap between engagement practices of the top 20%, the so called best in class and the bottom 30%, their so called laggards.³

² Aberdeen Group

³ Aberdeen Group

As the utilisation of contingent workers continues to grow, organisations need to improve their business models and re-adjust their business processes as they relate to contingent workers.

Human capital comes at a cost. Indeed, the key question for any enterprise focused on human capital is “how do we maximise the human capital return on our investment?”

Managing the total cost of labour is an essential element of this goal. Human capital costs can be both fixed and variable. HR professionals know only too well the inputs into the fixed cost of employees, namely hiring costs, training costs, management costs and, perhaps more currently relevant, separation costs. Many of these costs can be minimised if not avoided by using a contingent workforce.

The cyclic nature of the economy in general and features of many industries specifically, fuel this demand. Too often, however, procurement departments and to some extent, Human Resource departments are not fully engaged in recognising and accommodating the subtle challenges associated with managing this critical component of the workforce. Their companies therefore frequently incur unnecessary costs and expose themselves to unnecessary risks.

While most organisations suggest that contingent workers should not be processed and managed in the same fashion as “temporary clerical workers”, there is debate and even confusion as to how they are best managed.

In many organisations, individual hiring managers improvise inefficient processes to manage their contract talent needs, resulting in multiple (and often redundant) vendor relationships, non-uniform pricing, uncertain compliance status, and tremendous overall losses in time and money. Moreover the loss of talent and ongoing engagement of this most critical element of the workforce can lead to increased costs and at worst, a material loss of competitive advantage.

Human Resource staff would rightly question how might they best take advantage of the contingent workforce leveraging the many benefits such a model has to offer?

Perhaps the best way to answer this question is to consider the three distinct steps in procuring the benefits of a contingent workforce, namely:

1. *SOURCE* (Locate, identify, recruit and select the best)
2. *ENGAGE* (Engage and contact, on mutually agreeable terms)
3. *MANAGE* (The individual, their work and their well-being as part of the talent pool)

By looking at each step as a separate but important element, the methods for leveraging the benefits and business opportunities become more apparent.

Sourcing the Talent

Typical methods of sourcing contingent workers include:

- Referrals from current staff
- Internal talent management programs
- Introduction via recruitment companies.

Contingent workers can be identified from many different sources and by according to one study, a common practice is to self source or in-source.⁴ However, this process has led to outcomes which are far from best practice.

According to the Aberdeen Group, the outcomes for clients that self source, engage and manage themselves, are not as favourable as those sourced, engaged and managed by a specialist provider. In-sourced companies had less compliance, fewer costs savings, longer times to induct and longer recruitment fill times.⁵ Clearly, if this study is any indication, out-sourcing the introduction of contingent workers provides for better outcomes.

Focusing on outsourced introduction, there are several sourcing strategies than can be adopted.

In summary, these include:

- Sole sourcing from one supplier
- Sourcing from multiple suppliers via a primary (or master vendor) supplier
- Multiple suppliers on a panel without a co-ordinating vendor
- Open bidding direct from the market including the contingent worker him/herself

According to one report, common sourcing arrangements or supply models are via a primary or master supplier, with 41% of respondents stating this is their preferred method, or via multiple suppliers or open bidding. Only 22% sole source, that is, use a single supplier for all their needs.⁶

This stands to reason. Single supplier strategies are best focused on homogenous skill sets, where the supplier is a true specialist and the client can leverage their buying power to negotiate favourable arrangements.

Companies can gain economies of scale by using a single sourcing strategy. However, where there is a mix of skills required, the single sourcing strategy may not deliver the best outcomes.

Contingent workers can be utilised in many facets of the business, including technology, accounting, office support, engineering and industrial roles.

Rarely does one supplier have the necessary reach, expertise, skill and knowledge to provide the best workers across such a diverse need. Therefore, companies should consider multiple suppliers.

However, with the use of multiple suppliers comes more risk, increased administration and less purchasing power. Without a commercially sound strategy, the complexity of managing multiple suppliers may diminish the value of this approach. Add those contingent workers sourced from in-house strategies, it is easy to see how companies have ended up with a multitude of systems, processes, policies and practices to accommodate this mix.

How do the best of breed overcome this issue? This is where specialist contractor management organisations come in.

Sourcing talent is only the first step of an integrated model focused on human capital management. Other steps include successful engagement and management of the contingent workforce. These three steps, sourcing (or recruitment), engagement and management are indeed three distinct and separate specialist areas. Disaggregate these within the process and select the best supplier for each and you will approach best practice.

⁴ Dr John Sullivan

⁶ Aberdeen Group

⁵ Aberdeen Group

Engagement and Management: A two step approach

Many organisations have a mix of engagement models which typically follow the recruitment source, namely:

- a) Engaged directly by the company (either as “employees” or “independent workers via their own entity”)
- b) Engaged via a myriad of recruitment companies and suppliers

Many of these approaches appeal because they fit into the standard and accepted paradigm promoted by many “one vendor one party responsible”. That is, if we source through a recruitment agency, then we should have the contractor engaged and managed via that agency. While on the face of it, this might have appeal, the reality is it’s a long way from best practice.

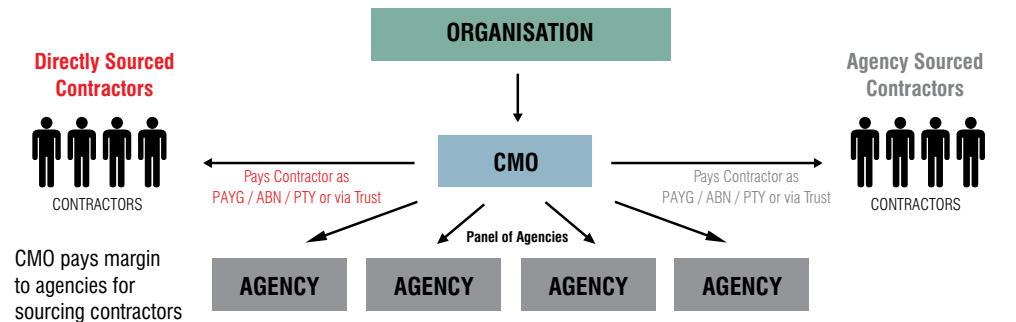
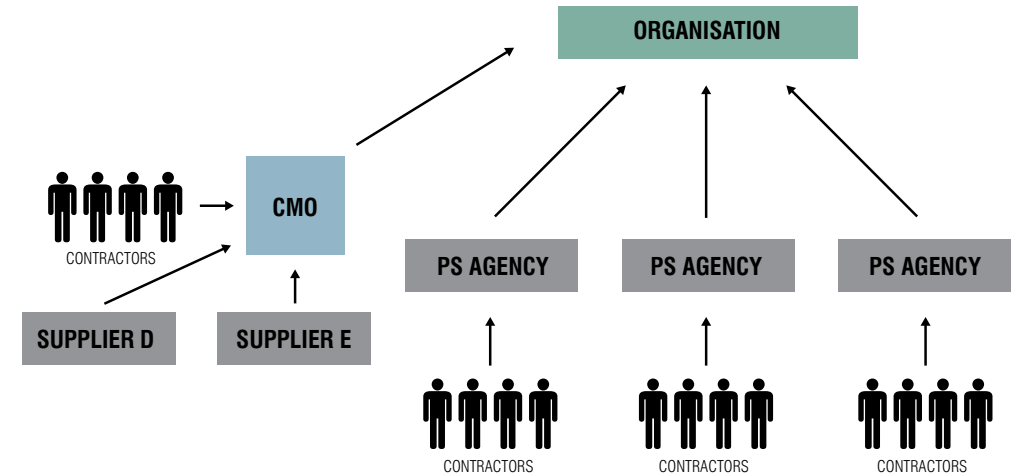
Specialisation of services has become the norm but beware; the often advertised mantra of many suppliers in the sector “we specialise in all areas”; is not only an oxymoron, it is potentially financially disastrous. Let’s take the recruitment industry for example; often the agency that finds the contractor then goes on to manage them. This requires them to have a beefed up back office for payroll, superannuation, a legal department and debtors function.

But very few agencies find that their back office processes add value; indeed, many have lost millions trying to get their back office more effective and efficient. The list of senior managers that have fallen on the sword of back office improvement is large. One just has to review the public announcements of the listed agencies to validate this point. And who ultimately is paying for this folly? The end client, in their contractor fees.

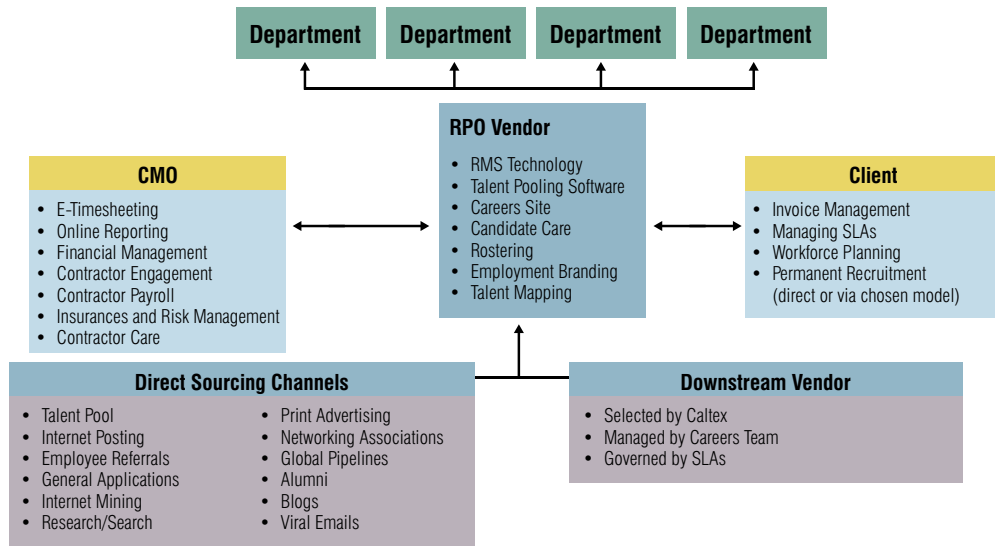
Recruitment Agencies should focus solely on attracting and locating talent and pass the contingent worker onto Contractor Management Organisations for payroll and other back end services. By doing so, they should be able to supply contingent workers at a lower cost, passing the savings over to the end user. Their margin, which ordinarily includes the cost of providing that unnecessary non value-add beefed up back office, could be discounted, by taking out of the equation the cost of providing payroll and administrative services, allowing them to focus on what they do best, sourcing talent.

But who then is best to engage and manage these contingent workers and ensure that the administrative services such as pay rolling and salary packaging necessary to run them remain efficient and moreover compliant, not only to your company’s practices, but also to the law?

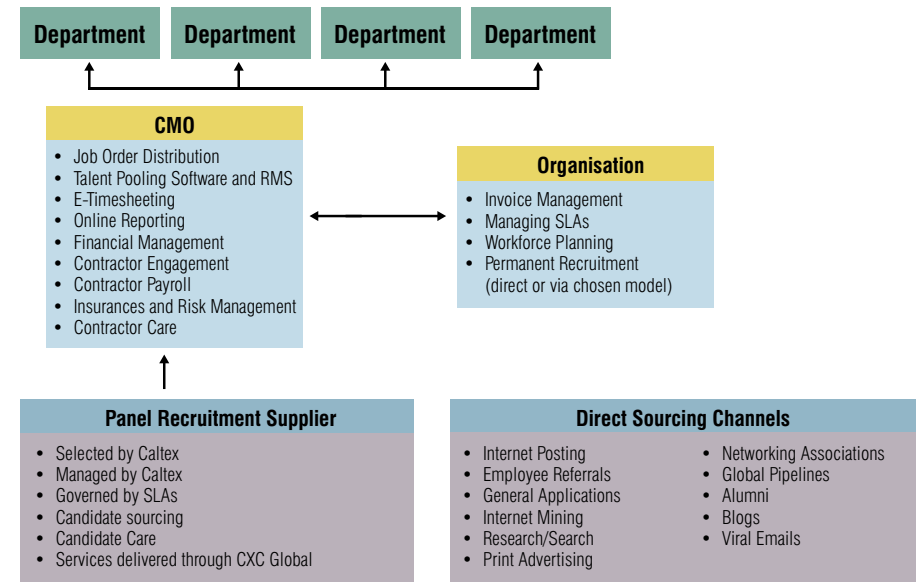
Specialist Contractor Management Organisations or CMO’s may be the answer. Specialist CMO’s make a full time business of engaging and managing contractors and others that make up your contingent workforce. They have the necessary skills, knowledge, systems and insurances to protect your company while gaining the full benefit of a contingent workforce. They are the solution to multiple suppliers for sourcing and provide further value added services in engaging and managing the contingent workforce, typically at a fraction of the cost charged by recruitment agencies.



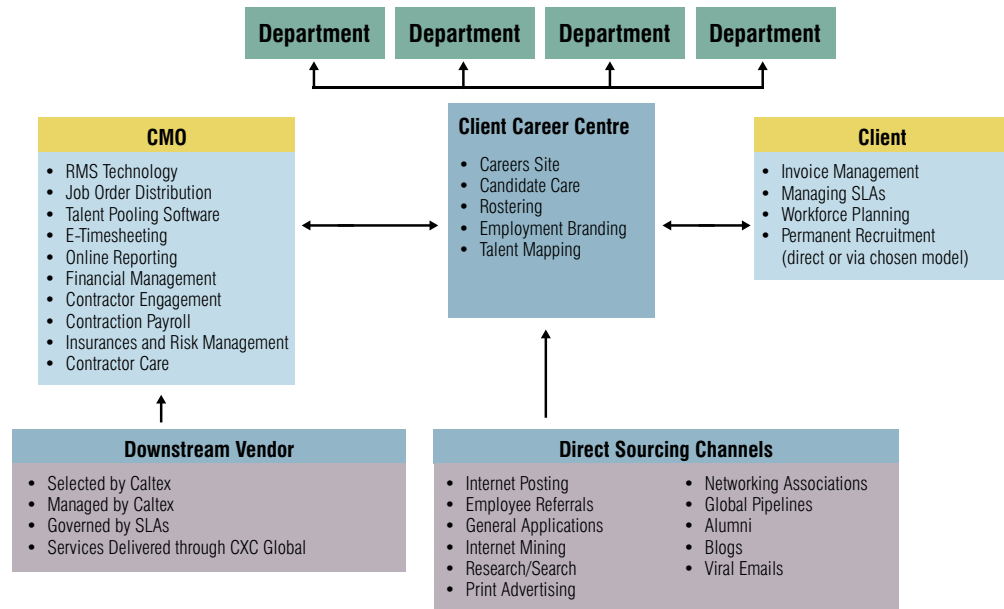
In-sourced RPO Model using RPO vendor



Panel of Recruitment Suppliers with CMO as Master Vendor



In-house Recruitment Team Model using CMO Platform



Some of the services offered by CMO's include:

- Advice on pay rates, recruiter margins, rates by skill level
- Provision of on-line timesheets with management reporting
- Specialist payroll management services
- Value add services like labour costing and workforce planning
- Protection via quality processes and insurances to mitigate customer risk
- Multiple remuneration structures offered to the contingent worker

The larger ones also offer value add services like overseas sourcing, overseas placement of excess resources, international offices and salary packaging for the contractor.

On this last point, don't discount the value that CMO's offer in salary packaging. Contingent workers can gain legally allowed benefits through salary packaging, which can be a tool used to strengthen both attraction and retention of talent. Selection of those CMO's that do this well will ensure organisations get the best contingent workers at the best market price.

In addition, and perhaps most importantly, a credible CMO will provide advice and help you mitigate risk. And there are many.

Here are just a few:

- Risks associated with definition of 'employer' and cross claims for employee entitlements
- Pre-engagement risks associated with representations of the recruiter
- Assumption of risk associated with section 52 of the trade practices act, dealing with deceptive and misleading conduct
- Assumption of risk associated with workers compensation OHS and common law obligations in respect to a safe environment
- Risks associated with base pay rates, awards for contingent workers, benefits and entitlements.

Unless you are dealing with a credible and financially sound CMO, you run the risk of being caught up in these and other legal wrangles.

The value of using a CMO is even more evident when one considers the total cost and quality of the contingent workforce. These elements can be impacted by current labour demands, sources of supply and business systems information.

A CMO is often a great source of market intelligence, particularly in respect of current labour demand and skills availability. Factors which impact demand include geographic availability, specialisation, urgency of supply and current business activity. CMO's can provide you valuable information ahead of any project launch, enabling you to map your needs against the current supply curve. Supply arrangements need to be flexible.

Organisations need to be able to shift focus from one supplier to multiple suppliers, or a mix of specialists including in-sourcing of contingent workers. CMO's provide you with the flexibility of choosing your preferred recruitment model for contingent workers with the stability and security of one platform for engagement and management. While value can be created by selecting and sticking with one or a group of recruitment suppliers, CMO's can provide excellent and often valuable information about current supply of skills and resources across many domains, including price range, geographic segment of skill speciality.

Also, the larger CMO's see material value for their clients in their ability to link into existing business systems proving seamless gateways to valuable managing information and business intelligence. More often executives are asking questions about their contingent workforce. How much do they cost? Are we engaging them and inducting them correctly? Are we paying them correctly? Have we got the right disengagement model and protection? CMO's are able to ensure organisations are protected in this regard. In addition, CMO's can enhance visibility into a contingent workforce, providing live, comprehensive reporting on all aspects of the engagement model.

One recent study looked at the competitive framework for best in class contingent worker engagement models. Their focus was on 5 areas of performance, namely:

- (a) Process – tasks of daily contractor management
- (b) Organisation – internal collaboration
- (c) Knowledge management – leveraging information
- (d) Technology – for managing contingent labour
- (e) Performance management – metrics of success

They support the view that best practice is to use specialists for each segment of the process, namely:

- Methods focused on finding and sourcing (or recruiting) the contingent workforce (whether via recruitment agencies or internally or a mix), disaggregated from
- Methods focused on engaging the contingent workforce, disaggregated from
- Methods focused on managing the contingent workforce.⁷

⁷ Aberdeen Group

This approach has been used very successfully in many of Australia's largest companies. And there is no surprise why; because it delivers great efficiencies at lower cost and risk. Suffice to say, best in class performers tended to have:

- Standardized contract labour management processes
- Ability to track labour spend
- Internal review processes from compliance
- Perfected contract labour grievance practices
- Repositories for current and past workers
- High use of a managed service vendor or CMO
- Sophisticated reporting and tracking systems

Fortunately achieving best of class status is not particularly difficult, as today, larger contract management organisations, supported by their specialised technology and business relationships can provide much if not all of the functions necessary to achieve best practice status.

Finally, to ensure that a contingent workforce remains part of an organisation's talent mix, who is best to manage them during their assignment with the organisation? HR are. Each HR person should take just as much responsibility for contingent workers as he or she does for permanent staff. Why?; because organisations want contingent workers to be part of the team, seeing the host client as a potential permanent workplace. Contingent workers are the best advertisement when it comes to winning the war on talent.

Sure, some, and perhaps many, prefer the flexibility contracting or temping offers, but equally, many would be willing to consider a more permanent relationship within your company if they engaged the right way.

In Conclusion

Fortunately you need not work alone in best practice management of contractors and contingent workers; there is a valuable role for Contractor Management Organisations in managing an existing contactor base, particularly at renewal time; but that process and the overall relationship with the knowledge worker will be more meaningful and enduring if HR sees these valuable workers as part of the solution, not as just an add on for procurement or legal to be concerned with.

There are many definitions of best practice; one need only Google search to find a few. Whatever your preference, I know from my own experience as a managing director, running companies with literally thousands of contingent staff, you will move closer to best practice when you disengage the three steps of sourcing, engaging and managing contingent workers and actively engage the services of an experienced contractor management organisation and it certainly worked for us.

Appendix



B

FAQ'S FROM CONTRACTORS IN AUSTRALIA

The following FAQs address many common questions posed by contractors, and include information about contracting through a Contingent Workforce Management (CWM) company.

1. Why do I need a Tax File number? Can CWM company assist me in getting a TFN?

If you intend to earn money in Australia you will generally be required to have a tax file number (TFN), a unique number issued by the Tax Office to individuals and organizations for identification and record keeping purposes.

Without a tax file number:

- your employer must take 46.5% of your wages in tax
- financial institutions are required to tax your interest at 46.5%
- Centrelink will generally not pay you an allowance such as - Youth Allowance, Newstart or Austudy
- you will not be able to defer your higher education fees
- your tax return and/or Australian business number (ABN) application may take longer to process.

There are 3 ways for individuals to apply for a TFN. This depends on your circumstances.

If you...	then you...
are visiting Australia and intend to work in Australia or are migrating permanently	you can apply online. Read the ATO's Online tax file number registration system for permanent migrants and individuals visiting Australia – fact sheet
live outside Australia and receive rental income from an Australian property, business income from Australian interests or need to lodge an Australian tax return for any other reason	read the ATO's Application or enquiry for a tax file number – for individuals living outside Australia
are an Australian resident for tax purposes	Read the ATO's Tax file numbers - individuals

Source: <http://www.ato.gov.au/individuals/content.asp?doc=/content/6979.htm&page=2&H2>

2. Do I need an ABN?

Applying for an ABN is not compulsory. Employees are not entitled to an ABN as they are not carrying on an enterprise. However you do need an ABN if operating as a sole trader or with a company structure.

3. Am I entitled to an ABN?

You can use the ATO ABN entitlement tool to determine your eligibility for an ABN. The tool will assist you to decide whether:

- you have undertaken sufficient activities to start an enterprise
- the business activities you are engaged in are an enterprise
- you are a contractor rather than an employee

The ABN entitlement tool can be found here:

http://calculators.ato.gov.au/scripts/axos/axos.asp?CONTEXT=&KBS=ABN_Entitlement.xr4&go=ok

4. How do I apply for ABN?

Application for ABN registration for individuals (sole traders):

<http://www.ato.gov.au/businesses/content.asp?doc=/content/15772.htm>

OR

Online application for ABN:

<https://abr.gov.au/abrweb/default.aspx?pid=76&sid=1&outcome=13>

5. How do I cancel my ABN?

There are several ways to cancel your ABN:

- Online – cancel your registrations through the Australian Business Register at www.abr.gov.au
- By phone – simply phone 13 28 66 between 8.00am and 6.00pm, Monday to Friday by paper – complete the paper form Application to cancel registration (NAT 2955).

Source:

<http://www.ato.gov.au/businesses/content.asp?doc=/content/13541.htm>

6. Do I need to register for GST?

All businesses with a GST annual turnover of \$75,000 or more must register for GST and will need an ABN to do this. Businesses with a lower annual turnover may choose to register.

You can download a copy of the GST for small business booklet:

<http://www.ato.gov.au/content/downloads/bus20724nat3014072009.pdf>

7. How do I register for GST?

You can register by:

- Online – visiting www.business.gov.au
- By phone – simply phone 13 28 66 between 8.00am and 6.00pm, Monday to Friday
- By paper – complete the paper form Application to register for an GST individuals (sole trader) (NAT 2938) or GST registration for companies, partnerships, trust and other organisations (NAT 2939)
- Through a tax agent

8. How do I cancel my GST registration?

You can cancel your GST registration:

- Online – cancel your registrations through the Australian Business Register at www.abr.gov.au
- By phone – simply phone 13 28 66 between 8.00am and 6.00pm, Monday to Friday By paper – complete the paper form Application to cancel registration (NAT 2955).

Source: <http://www.ato.gov.au/businesses/content.asp?doc=/content/13541.htm>

9. Why do I need to register for GST with a CWM company even though my business GST turnover is less than \$75000?

You will need to register for GST when using a CWM company for payroll since the company's threshold is likely to be higher than \$75000.

10. When do I need to lodge my BAS statements? (quarterly limits specify the due time)

A Business Activity Statement is a new, single form you will use to report your business tax entitlements and obligations, including the amount of input tax credits for GST paid for acquisitions and the amount of GST collected. The due dates for lodgement for each quarter's return are:

1st Quarter: 28 October 2011

2nd Quarter: 28 February 2012

3rd Quarter: 28 April 2012

4th Quarter: 28 July 2012

11. What is IAS?

IAS is an income activity statement. If you are a partner in a partnership, a sole trader, or operate under a company or trust structure, you may receive more than one activity statement. For example, if your partnership is registered for goods and services tax (GST):

- you'll receive an activity statement for the partnership to report GST, and
- each partner may also receive an activity statement to pay their own PAYG installment.

12. What is the difference between the cash or accruals basis of accounting?

Under the accrual basis accounting, income and expenses are recorded when they are actually incurred / invoiced.

In cash basis accounting, revenues are recorded when cash is actually received and expenses are recorded when they are actually paid (no matter when they were actually invoiced).

The Taxation Ruling TR 98/1 states that where income is derived by an employee, it is likely that a cash basis of income recognition is appropriate. Also, where income is derived in a non-business activity in providing knowledge or skill, a cash basis is appropriate.

However, in a business activity carried that involves the sale of trading stock, the use of circulating capital or the use of staff and equipment to produce income, the ruling states that an accrual basis of income recognition is more appropriate.

13. What is Personal Services Income (PSI)?

Income that is gained by an entity (i.e. a company, trust or partnership) for the personal efforts or skills of an individual is classified as personal services income. If under your contract role you are paid for your personal efforts or skills, then you will be subject to PSI.

Income is not deemed as personal services income if it is mainly:

- for the supply or sale of goods;
- for granting a right to use property; or
- generated by an income producing asset or business structure.

For example, a taxpayer who sells goods or who delivers products using a truck that they own is not deriving personal services income because their income is mainly from:

- the sale of goods, or
- the use of the truck.

It is not an outcome for personal efforts and skills. In this case, the rules of PSI will not apply to the taxpayer.

The fact that income is paid under a contract does not stop it being for an individual's personal efforts or skills (s.85-5(4)) (see *Fowler v. FC of T* (2008) ATC 2476, where the PSI rules applied to income derived by a computer consultant's company).

Another example is the income derived by a sports person from his or her personal skill is classified as PSI.

To determine if you are receiving PSI, you will need to look at the income (or reward) from each contract you complete, and work out what percentage of the payment is for:

- your skills, knowledge, expertise or efforts (that is, the labour component), and
- the materials supplied and/or tools and equipment you use to complete the job.

If you work out that:

- more than 50% of the income received is for your skills, knowledge, expertise or efforts, then the income for that contract is PSI
- 50% or less of the income received is for your skills, knowledge, expertise or efforts, then the income for that contract isn't PSI.

Example: working out if income is PSI

Mark is an IT consultant who operates as a sole trader. Mark completes two contracts.

Contract completed	Work done	What Mark charged	Is the income PSI?
Contract 1	fixed fee of \$2,600 (inclusive of GST) for providing the services	Total amount of \$2,600 labour \$2,470 (95%) materials (5%)	Yes, the \$2,600 is PSI as more than 50% of the income received is for Mark's skills and knowledge
Contract 2	fixed fee of \$800 (inclusive of GST) for providing the services	Total amount of \$800 labour \$320 (40%) materials (60%)	No, the \$800 isn't PSI as 50% or less of the income received is for Mark's skills and knowledge.

The terms and conditions of the contract as well as invoices and written agreements (which show the arrangement the contractor have for the work) are important in working out whether the income is PSI or not.

If the taxpayer receives income as a result of personal efforts or skills, he or she will be subject to PSI rules and will need to go to next step 2 which is the results test.

14. How do you determine whether a contractor is conducting a personal services business (PSB)?

For a contractor to prove that they are conducting a personal services business, the following needs to be satisfied:

- The contractor has a personal services business determination from the commissioner in force; or
- The results test has been satisfied; or
- If less than 80 per cent of the PSI is derived from a single source, the contractor satisfies one of the other three remaining PSB tests

The four personal services business tests are:

1. The results test:

If a contractor satisfies the results test they are conducting a PSB, even if 80 per cent or more of PSI is from one source.

To satisfy the results test the following three conditions must be satisfied for at least 75% of the contractor's personal services income:

- The personal services income is for producing a result and the taxpayer or PSE are paid when the task is completed.
- The contractor is required to supply the plant or equipment or tools of trade, needed to perform the work that produces the result, however if end user supplies some minor tools and equipment, the condition will still be met; and
- You are liable for the cost of rectifying any defects in the work performed.

For each of these conditions, the industry, custom and practice will be considered and taken into account.

According to TR 2000/14, a number of factors are taken into account:

- Lawful authority to command
- How the work is performed?
- Risk
- Place of performance
- Hours of work
- Leave entitlements
- Payment
- Expenses
- Appointment
- Termination
- Delegation

Features of Relationship	Employee - Contract of service	Independent Contractor-Contract for Services
1. Lawful authority to command	Under a contract of service, the payer usually has the right to direct the manner of performance. Of course, where the nature of the work involves the professional skill or judgment of the worker, the degree of control over the manner of performance is diminished. What is important is the lawful authority to command that rests with the payer. Tasks are performed at the request of the employer. The worker is said to be working in the business of the payer.	The hallmark of a contract for services is said to be that the contract is one for a given result. The contractor achieves the result in terms of the contract. The contractor works on his/her own account.
2. How is the work performed?	Tasks are performed at the request of the employer. The worker is said to be working in the business of the payer.	An independent contractor enters into a contract for a specific task or series of tasks. The contractor maintains a high level of discretion and flexibility as to how the work is to be performed. However, the contract may contain precise terms as to materials used and methods of performance and still be one for services.
3. Risk	An employee bears little or no risk. An employee is not exposed to any commercial risk. This is borne by the employer. Further, the employer is generally responsible for any loss occasioned by poor workmanship or negligence of the employee.	An independent contractor stands to make a profit or loss on the task. They bear the commercial risk. The contractor bears the responsibility and liability for any poor workmanship or injury sustained in performance of the task. Generally, a contractor would be expected to carry their own insurance policy.
4. Place of performance	A worker under a contract of service will generally perform the tasks on the payer's premises using the payer's assets and equipment.	A contractor, on the other hand, generally provides all their own assets and equipment.
5. Hours of work	An employee generally works standard or set hours.	An independent contractor generally sets their own hours of work.
6. Leave Entitlements	The contract generally provides for annual leave, long service leave, sick leave and other benefits or allowance.	Generally, an independent contract does not contain leave provisions.
7. Payment	An employee is generally paid an hourly rate, piece rates or award rate.	Payment to an independent contractor is based upon performance of the contract.
8. Expenses	An employee is generally reimbursed for expense incurred in the course of employment.	Generally, an independent contractor incurs their own expenses.
9. Appointment	An employee is generally recruited through an advertisement by the employer.	An independent contractor is likely to advertise their services to the public at large.

Features of Relationship	Employee - Contract of service	Independent Contractor-Contract for Services
10. Termination	An employer reserves the right to dismiss an employee at any time (subject to State or Federal legislation).	An independent contractor is contracted to complete a set task. The payer may only terminate the contract without penalty where the worker has not fulfilled the conditions of the contract. The contract usually contains terms dealing with defaults made by either party.
11. Delegation	An employee has no inherent right to delegate tasks to another. However, there may be a power to delegate some duties to other employees.	An independent contractor may delegate all or some of the tasks to another person, and may employ other persons.

Source: <http://www.unisa.edu.au/fin/tax/payg/paygwithholding.pdf>

If the results test is not satisfied, it is necessary to consider the 80 per cent rule where, if 80 per cent or more of the PSI is not from one entity, the PSI will be exempt from the PSI regime provided the individual satisfies one of the following tests.

2. The unrelated client test:

The contractor will meet this test if:

- They provide services to two or more entities that are not associates of each other, or the contractor and
- The services are provided as a direct result of the contractor making offers or invitations (for example, by advertising) to the public at large or to a section of the public.

This test is not satisfied by merely registering with a labour hire firm or placement agency (s.87-20(2)).

3. The employment test:

The contractor will meet this test if he engages one or more entities (other than associates) to perform work and those entities together perform at least 20 per cent, by market value, of the individual's principal work.

Principal work does not include administrative work. It includes work which fulfils the obligation under the agreement with the service acquirer.

4. The business premises test:

- The contractor will meet this test if they maintain and use business premises:
- to gain or produce the personal services income
- That the contractor has exclusive use over (the premises cannot be shared)
- Are physically separate from any premises that the contractor uses for private purposes.

15. What is Payroll tax?

Payroll Tax is a State wage tax calculated on wages paid or payable by an employer to its employees and applies in all States and Territories of Australia.

Current Payroll Tax threshold:

State or Territory	Rate	Total Annual Australian Wages Threshold	Monthly Tax (Per Calendar Threshold Month)
New South Wales	5.65%	\$638,000	\$53,167
Victoria	4.95%	\$550,000	\$45,833
Queensland I (Note 1)	4.75%	\$1,000,000	\$83,333
South Australia	4.9%	\$600,000	\$50,000
Western Australia	5.5%	\$750,000	\$62,500
Tasmania	6.1%	\$1,010,000	\$84,167
ACT	6.85%	\$1,500,000	\$125,000
Northern Territory	5.9%	\$1,250,000	\$104,167

Note 1: Threshold slowly phases out to the point where no reduction amount is available where total Australian wages paid exceed the following upper limits:

Upper Reduction Threshold (Monthly)	Upper Reduction Threshold (Yearly)	Taper Rate
\$416,667	\$5m	\$1 in every \$4

16. Who has to pay Payroll Tax?

Payroll tax is payable when an employer's or 'group of employers' total Australian wages (including interstate) exceeds the general deduction threshold level.

17. What are the Payroll Tax liabilities for CWM company consulting?

Generally, the end-user client has the liability for payroll tax (PRT), not the CWM consulting company. The end-user can either be the actual "employer", or if the contractor is employed through an employment agent, then the agent is liable.

Mostly, if the contractor is contracting directly with the client, the client may ask the contractor to pay for the PRT out of the agreed rate in which case PRT will be deducted from the contractor's rate on a pay-to-pay basis if opted for salary packaging or standard PAYG via the CWM company.

The contractor may not be subject to PRT if they qualify for the sole trader or the company structure as they will not be deemed as employee.

A number of factors need to be considered to determine whether the 'person' is an employee or a contractor. These factors have been established by the courts over a number of years. Some of the more significant factors are:

- Does the designated person have the right to exercise control over the manner in which the work is to be performed?
- Is there any documentation that indicates the person is an employee (for example, employment agreement; letter of appointment)?
- Are the hours of work defined?
- Is the person engaged on a continuing basis?
- Does the designated person provide materials, plant and equipment?
- Is the person paid periodically rather than on a per job basis?
- Is the person paid sick leave, holiday pay or superannuation?
- Is the person working under similar conditions to employees?
- Is the person prevented from delegating or subcontracting their work to another person?
- Are the services provided by the person integral to the business conducted by the designated person?

If the answer to the majority of these questions is 'Yes', it is likely that the person is an employee and accordingly, payments made to that person are subject to payroll tax.

18. Is there a liability for Payroll Tax where services are performed offshore or outside Australia?

If an employee is paid in Australia but all the services are performed wholly in another country for a continuous period exceeding six months, then only the first 6 months' worth of wages are liable for PRT.

The remainder of any continuous period after the first six months will not be liable for PRT even if it covers more than one financial year.

Where the services of an employee are performed in the seas adjacent to a state or territory of Australia (e.g. an oil rig), wages paid or payable will be subject to PRT in that State or Territory where the services are provided regardless of where the wages are paid.

However, where services are provided outside the coastal limits of all states or territories / overseas, the PRT liability arises in the state or territory where the wages are paid (subject to the six-month rule discussed above).

19. What determines the State or Territory in which the Payroll Tax liability falls?

Two factors are taken into consideration to determine this:

- where the work is performed
- where the wages are paid

If in a month the work is performed wholly in one state, the wages are liable for PRT in that state irrespective of where in Australia the wages are paid. *This is also the case where the wages are paid overseas.*

If in a month the work is performed partly in one state and partly in another, the state in which wages are paid becomes the overriding factor. *This is so, even if the work was performed partly overseas.*

20. Why do I need to pay Payroll Tax when my pay is below the threshold?

If your client's payroll threshold exceeds the general deduction threshold; the contractor / client / agency will need to pay for Payroll Tax.

21. What is the difference between Australian resident for tax purposes and non-resident for tax purposes?

A taxpayer who is an Australian resident is taxed on all sources of income whether or not it is derived in or out of Australia. However, a non-resident is only liable to tax on income which has an Australian source.

The source of wages is usually where the duties or work is performed and not where the wages are paid.

Resident Tax rates 2009-10

Taxable income	Tax on this income
\$1 – \$6,000	Nil
\$6,001 – \$35,000	15c for each \$1 over \$6,000
\$35,001 – \$80,000	\$4,350 plus 30c for each \$1 over \$35,000
\$80,001 – \$180,000	\$17,850 plus 38c for each \$1 over \$80,000
\$180,001 and over	\$55,850 plus 45c for each \$1 over \$180,000

If non-resident for the full year, the following rates apply:
Tax rates 2008-09

Taxable income	Tax on this income
\$0 – \$34,000	29c for each \$1
\$34,001 – \$80,000	\$9,860 plus 30c for each \$1 over \$34,000
\$80,001 – \$180,000	\$23,660 plus 40c for each \$1 over \$80,000
\$180,001 and over	\$63,660 plus 45c for each \$1 over \$180,000

Non-residents are not required to pay the Medicare levy.

Source: <http://www.ato.gov.au/individuals/content.asp?doc=/content/12333.htm>

22. Am I a resident of Australia for tax purposes?

There are four tests for residency:

- Residency according to ordinary concepts
- The domicile and permanent place of abode
- The 183 day test
- The Commonwealth superannuation fund test

Residency according to ordinary concepts:

According to the residency test, the contractor will need to display behaviour over a period of time that is consistent with residing here, such as continuity, routine or habit.

Generally, six months is considered to be a considerable time when deciding whether the behaviour is consistent with residing here. However, this is not ultimately determinative. In this respect the following factors are useful in describing the quality and character of an individual's behaviour to determine their residency:

Intention or purpose of presence:

The individual's intention, purpose or reason for being in Australia assists in determining whether an individual resides here. While individuals may have multiple reasons, there is usually a main purpose to their presence.

A settled purpose, such as employment or education, may support an intention to reside in Australia.

Family and business/employment ties:

A factor that may indicate an individual is residing here is the presence of their families. This does not mean that the presence of their families always results in a decision that the individuals are residing here. Also, even if families do not accompany them, the individuals may still be residing here.

Maintenance and location of assets:

Occupation of a dwelling in Australia that the individual owns or is purchasing, suggests establishment of a home in Australia. An individual may have a home and other assets outside Australia and still be residing here for the duration of the stay. Other assets in Australia, such as motor vehicles and bank accounts, add further weight to the individual having established behaviour consistent with residing here.

Social and living arrangements:

Social and living arrangements are the way individuals interact with their surroundings during their stay in Australia and may indicate they are residing here. These arrangements may include joining sporting or community organisations, enrolling children in school, redirecting mail to Australia or committing to a residential lease.

The domicile and permanent place of abode:

The taxpayer is considered to be a resident of Australia if his/her domicile is in Australia, unless the commissioner is satisfied that his or her permanent place of abode is outside Australia. Under the Domicile Act 1982, a person acquires a domicile of choice in Australia if the person intends to make his or her home indefinitely in Australia.

The 183 day test:

Under this test, if the taxpayer is actually present in Australia for more than half the income year, whether continuously or intermittently, he or she may be said to have a constructive residence in Australia unless it can be established that:

- his or her usual place of abode is outside Australia; and
- he or she has no intention to take up residence here.

The Commonwealth superannuation fund test:

This test covers current Commonwealth government employees and states that taxpayer is a resident if he or she is:

- a member of the superannuation scheme established under the Superannuation Act 1990, or
- an eligible employee for the purposes of the Superannuation Act 1976.

If the taxpayer is a resident under this test, his or her spouse and any children under the age of 16 would also be regarded as residents for income tax purposes.

To summarise, a person who comes to Australia is a resident of Australia if any of the following tests applies:

- (a) He or she 'resides' in Australia according to the ordinary meaning of that word (i.e. the ordinary concepts test),
- (b) He or she has acquired an Australian domicile unless the Commissioner is satisfied that the person's permanent place of abode is outside Australia (i.e. the domicile test),
- (c) He or she is actually in Australia for more than one-half of the year unless the Commissioner is satisfied that the person's usual place of abode is outside Australia and that the person does not intend to take up residence in Australia (i.e. the 183 days test),
- (d) The Commonwealth Superannuation Fund test is satisfied.

Residency calculator:

<http://calculators.ato.gov.au/scripts/axos/axos.asp?CONTEXT=&KBS=Resident.XR4&go=ok>

Source: TR 98/17 - <http://law.ato.gov.au/atolaw/view.htm?docid=txr/tr9817/nat/ato/00001>

IT 2681 - <http://law.ato.gov.au/atolaw/view.htm?locid=ITR/IT2681/NAT/ATO>

23. I am on a 417 (working holiday visa). What will be my residency status for tax purposes?

Please use the ATO residency calculator to determine your residency status:

<http://calculators.ato.gov.au/scripts/axos/axos.asp?CONTEXT=&KBS=Resident.XR4&go=ok>

Also, submit the 417 LAFHA questionnaires along with a screenshot of the above residency status result.

Also, 417 visa holders cannot work for the same client or more than six months as per the conditions of their visa.

24. How is the residency of a Pty Ltd / company determined?

A company is a resident in Australia if:

- it is incorporated in Australia; or
- although not incorporated in Australia it carries on business in Australia and has either
 - its central management and control in Australia; or
 - its voting power controlled by shareholders who are residents of Australia.

SUPERANNUATION:

25. What is superannuation?

Superannuation (super) is a way of saving for retirement. If someone works in Australia, the employer may have to make super payments if the taxpayer:

- are less than 70 years of age
- are paid a salary or wages of A\$450 or more in a calendar month, and
- work full-time, part-time or on a casual basis.

Super payments are paid by employers in addition to the salary or wages received by taxpayer. If the taxpayer is eligible for super, his/her employer will pay their super into a super fund.

26. What is concessional superannuation cap and how is it taxed?

The concessional superannuation contributions cap for someone over 50 years for the 2009-10, 2010-11 and 2011-12 financial years is \$50,000. The concessional superannuation contributions cap for someone under 50 years for the 2009-10, 2010-11 and 2011-12 financial years is \$25,000.

Concessional contributions are sometimes known as 'pre-tax' contributions.

Excess concessional contributions tax is payable on excess concessional contributions at a rate of 31.5%. This is on top of the 15% paid by the fund on its taxable income (a fund's taxable income includes most concessional contributions).

27. What is non-concessional superannuation cap and how is it taxed?

Non-concessional contributions are those contributions made by or for the taxpayer to a complying super fund that are not included in their fund's assessable income. For example, personal contributions made from after-tax income.

Non-concessional contributions are sometimes known as 'after-tax' contributions.

Excess non-concessional contributions tax is payable on excess non-concessional contributions at a rate of 46.5%.

Excess concessional contributions also count towards the taxpayers non-concessional contributions cap. If the taxpayer contributions exceed both the concessional and non-concessional contributions caps in a financial year, they will end up paying 93% tax on the excess amount.

EXAMPLE:

Sunita is 68 years old and earns a salary of \$80,000 a year. During the transitional period, her concessional contributions cap is \$50,000 and her non-concessional contributions cap is \$150,000 for the 2009–10 financial year.

Sunita salary sacrifices \$50,000 of her salary so that her taxable income is \$30,000. Her employer also contributes 16.25% of her salary or \$13,000. Therefore her total employer (concessional) contributions are \$63,000.

The fund must pay 15% tax on all employer contributions it receives. Sunita must pay excess concessional contributions tax on her excess concessional contributions of \$13,000 at a tax rate of 31.5%.

Therefore the tax on her concessional contributions is as follows:

- \$50,000 is taxed at 15% in the fund
- \$13,000 is taxed at 15% in the fund + 31.5% (Sunita has to pay this).

The \$13,000 will also be counted towards her non-concessional contributions cap.

Sunita also contributes \$140,000 in non-concessional contributions after downsizing her house. Therefore, her total non-concessional contributions for the year will be \$153,000. As she is over 65, she cannot bring-forward any non-concessional contributions.

Sunita must pay excess non-concessional contributions tax on her excess non-concessional contributions of \$3,000 at a tax rate of 46.5%.

As a result, \$3,000 of Sunita's contributions is subject to tax at an overall rate of 93%.

Summary of contributions caps

Caps apply to contributions made to your superannuation (super) in a financial year. Any super contributed over a cap amount is subject to extra tax.

	Concessional cap	Non-concessional cap
2009–10 financial year	\$25,000 under 50 years	
\$50,000 over 50 years	\$15,000	
2008–09 and 2007–08 financial year	\$50,000	\$150,000
Tax on amounts over the cap	31.5% (in addition to the 15% paid by the super fund)	46.5%
Other information	Any concessional contributions in excess of the cap will also count towards your non-concessional contributions cap.	If you are under 65 years old at any time during the financial year, you may be able to bring forward the next two years of contributions, but certain conditions apply. This effectively allows you to contribute up to three times the cap at once, or at any time during the three financial years.

Source: <http://www.ato.gov.au/superfunds/content.asp?doc=/content/00106372.htm&page=1&H1>

If the taxpayer is 64 years old or less on 1 July of the financial year, he/she will be able to bring forward the next two years of non-concessional contributions. This means that the taxpayer can contribute up to \$450,000 over a three-year period.

The bring-forward is automatically triggered when the taxpayer's non-concessional contributions exceed \$150,000 in a particular year. Once this happens, the taxpayer's total contributions over the next two years cannot exceed \$450,000 minus the contributions made in the year the bring-forward was triggered.

Contributions over the cap amount are subject to extra tax. This extra tax is called the excess non-concessional contributions tax.

EXAMPLE:

Sandra (53) contributes \$160,000 to her super during a financial year. This triggers the bring-forward because it's higher than the non-concessional contributions cap amount of \$150,000.

Sandra can contribute up to \$290,000 (\$450,000 – \$160,000 = \$290,000) over the next two years without paying the excess non-concessional contributions tax.

Super lump sum tax table (Taxed and untaxed element):

The taxed element occurs where the superannuation fund has paid tax on contributions.

An untaxed element is a benefit that hasn't been subject to contributions tax or earnings tax.

Income component derived in the income year	Age at the date payment is received	Amount subject to tax	Maximum rate of tax (including Medicare levy)
Member benefit – taxable component – taxed element	Under preservation age	Whole amount	21.5%
Aged 60 or above	Nil – amount is non-assessable and non-exempt income	N/A	
Member benefit – taxable component – untaxed element	Under preservation age	Amount up to untaxed plan cap amount	31.5%
Amount above untaxed plan cap amount	46.5%		
Aged 60 or above	Amount up to the untaxed plan cap amount	16.5%	
Amount above the untaxed plan cap amount	46.5%		
Death benefit lump sum benefit paid to non-dependants – taxable component – taxed element	Any	Whole amount	16.5%
Death benefit lump sum benefit paid to non-dependants – taxable component – untaxed element	Any	Whole amount	31.5%
Death benefit lump sum benefit paid to dependants** – taxable component – taxed and untaxed elements	Any	None	Nil
Rollover super benefits – taxable component – taxed element	Any	Nil – amount is non-assessable and non-exempt income	N/A
Rollover super benefits – taxable component – untaxed element	Any	Amount up to the untaxed plan cap amount is non-assessable income and is non-exempt income	N/A
Amount above the untaxed plan cap amount	46.5%		
Super lump sum benefits less than \$200	Any	None	Nil
Super lump sum benefit (terminally ill recipient)	Any	None	Nil

**A dependant for a death benefit ETP (eligible termination payment) is:

- a surviving spouse or de facto spouse
- an ex-spouse
- a child under 18 of the deceased
- any person who is financially dependent on the deceased at the time of death, or at the time of payment of the death benefit ETP; or
- any person with whom the deceased had an interdependency relationship.

28. What is the maximum superannuation quarterly limit?

All employers are required to make quarterly contributions to an eligible employee's superannuation account. An employer does not have to provide the minimum 9% support for any earnings above the maximum superannuation contribution base quarterly limit.

The maximum contribution base for 2009/2010 is \$40,170 per quarter. No SG is payable if earnings <\$450 in a month.

29. What is the government superannuation co-contribution for low income earners?

An employee for superannuation guarantee purposes, and the self-employed, may be entitled to a government superannuation co-contribution. These contributions are non-deductible contributions.

In the 2009–10 year of income, an employee with total annual total income less than \$31,920 who makes personal superannuation contributions is eligible for a matching \$1 contribution from the government for every dollar of eligible personal contributions made to a complying superannuation fund.

The maximum amount of eligible personal contributions that the government will match is \$1000. That is, the government will contribute \$1000 if an employee with income less than \$31,920 makes \$1000 or more in personal superannuation contributions.

There is no entitlement to the co-contribution in the 2009–2010 year once an employee's total income is \$61,920 or more.

To summarise:

For the income threshold purpose your total income (less business deductions in the 2008 and later years) is the sum of your assessable income, your reportable fringe benefits and your reportable employer super contributions (from 1 July 2009 until 30th June 2012).

	Lower income threshold	Higher income threshold	What will I receive for every \$1 of personal super contributions?	What is my maximum entitlement?
From 1 July 2009 until 30 June 2012	\$31,920	\$61,920	\$1 for every \$1, up to a maximum super co-contribution of \$1,000 a year.	Your maximum entitlement is \$1,000. However, you must reduce this by 3.333 cents for every dollar of your total income, less business deductions is over \$31,920, up to \$61,920.

Source: <http://www.ato.gov.au/print.asp?doc=/content/42616.htm>

Eligibility

You will be eligible for the co-contribution if all of the following apply:

- you make a personal super contribution by 30 June each year into a complying super fund or RSA and don't claim a deduction for all of it
- your total income (less any business deductions for the 2007–08 and later years) is lower than the higher income threshold
- 10% or more of your total income is from
 - for 2006–07 and earlier years – eligible employment
 - 2007–08 and later years – eligible employment, carrying on a business or a combination of both
- you are less than 71 years old at the end of the year of income
- you do not hold an eligible temporary resident visa at any time during the year, unless you are a New Zealand resident or holder of a prescribed visa
- you lodge your income tax return for the relevant financial year.

EXAMPLE:

Barry's total income is \$40,000 and the personal superannuation contributions made by Barry is \$1000, the maximum government superannuation contributions will work out to be –

$$\$40,000 \text{ less } \$31,920 = \$8,080 * .03333 = \$269$$

Therefore, \$1000 (max) less \$269 = \$731

If all the conditions above remains the same except that the personal superannuation contributions by Barry is \$800, the maximum government superannuation contributions will work out to be –

$$\$40,000 \text{ less } \$31,920 = \$8,080 * .03333 = \$269$$

Therefore, \$800 (max) less \$269 = \$531

After the 2011–12 financial year, government superannuation co-contribution rates will be as following:

- \$1.25 for every \$1 of eligible personal contribution in 2012–13 and 2013–14 years. That is, the maximum government superannuation co-contribution for these years will be \$1,250, and
- \$1.50 for every \$1 of eligible personal contribution in 2014–15 and later financial years. That is, the maximum annual government superannuation co-contribution will be \$1,500.

30. Can a taxpayer select their own superannuation fund?

From 1 July 2005, employees have been required to choose the complying superannuation fund into which they want to have their superannuation guarantee contributions paid. Where an employee does not choose a superannuation fund, the employer may choose the complying superannuation fund. Check out the returns of the chosen fund carefully as often "Industry Funds" have less fees but also less returns and there are seldom advisors available to provide investment advice.

31. When is a contractor's superannuation contribution paid to the Superannuation fund?

Superannuation payments are required to be made quarterly. Some CWM companies use these funds to cash flow their business. This is not the spirit behind the legislation, and is risky to contractors. One should check that the contributions are made to the respective super accounts on a monthly basis, mostly by mid of every month for the previous month.

32. Can temporary residents who leave Australia access their super?

From 1 July 2002, temporary residents who permanently depart Australia can gain access to their accumulated superannuation. To be eligible for a payment:

- the person must have entered Australia on an eligible temporary resident visa (New Zealand residents are excluded)
- the person's visa must have expired or been cancelled, and
- the person must have permanently departed Australia.

The payment of superannuation benefits that qualify as Departing Australia Superannuation Payments are subject to special withholding tax rates to claw back the tax concessions the contributions received when originally paid into the superannuation. These rates are:

- tax free component – 0 per cent
- taxable component – 35 per cent, and
- untaxed component – 45 per cent.

Future superannuation payments made on behalf of temporary residents (except those from New Zealand) will continue to be held by the relevant superannuation fund. However, super funds are generally required to pay any super you have not claimed to the ATO when it has been at least six months since the later of the following events:

- you departed Australia, and
- your visa expired or was cancelled, and
- you have not already claimed your super money.

Your super fund is generally required to pay your super to the ATO. Departed former temporary residents can then claim these benefits from the ATO

Source: <http://www.ato.gov.au/superfunds/content.asp?doc=/content/32703.htm&page=2&H2>

33. How can I claim my super when leaving Australia for good?

The contractor can apply online from the ATO website.

<https://applicant.tr.super.ato.gov.au/applicants/default.aspx?pid=1>

Applying is free if application is lodged online. However, if a tax agent or other third party is used, they may need to pay for their services.

34. Can I leave my super in Australia?

You can leave your super benefit in Australia. However, after your super benefit is transferred to the ATO as unclaimed super, which generally occurs six months after you depart Australia and your visa has expired or been cancelled, this unclaimed super will not accrue any interest and will not provide any insurance benefits.

1. What are the benefits of making super contributions through a salary sacrifice arrangement?

The main benefits of salary sacrifice super contributions are:

- Super contributions are not a fringe benefit
- Super contributions are tax deductible
- Salary sacrifice reduces employee's assessable income
- Super contributions are concessional tax in the fund

However, if salary sacrificed super contributions are made to a non-complying super fund the contributions will be a fringe benefit. This means that there will be fringe benefits tax on the sacrificed amount and the super contributions will be recorded on the employee's payment summary as a reportable fringe benefit.

2. Can a self-employed contractor claim concessional tax treatment for any personal superannuation contributions made?

A self-employed person is not automatically entitled to claim superannuation deduction. They will need to use a form designed by their super fund to notify them that they are intending to claim a tax deduction for their contributions.

The form needs to capture the information requested on the ATO approved form, which is available here:

<http://www.ato.gov.au/superfunds/content.asp?doc=/content/00120268.htm&page=2&H2>

35. What are the preservation ages for superannuation purposes?

Depending on the date of birth of the taxpayer, the preservation age is worked out as follows:

Before 1/7/60:	55
Before 1/7/60 – 30/6/61:	56
Before 1/7/61 – 30/6/62:	57
Before 1/7/62 – 30/6/63:	58
Before 1/7/63 – 30/6/64:	59
After 30/6/64:	60

*All superannuation contributions and earnings from 1 July 1999 are preserved.

36. How can I find my lost super?

If you don't know who your super fund is, contact your Australian employer to find out where your super has been paid.

You may also be able to locate your super using the ATO's SuperSeeker service, which is can be accessed by phone or as an online tool. SuperSeeker searches for your lost super and provides you with possible matches.

SuperSeeker is a free service available 24 hours a day, seven days a week.

- You can access SuperSeeker:
- online using the SuperSeeker tool
- by phoning 13 28 65 and following the prompts.

To use SuperSeeker online, you will need to provide your:

- name
- date of birth
- tax file number (TFN).

To use SuperSeeker by phone you will need to provide your:

- date of birth
- TFN.

37. Is a self-managed superannuation fund suitable for me?

Many commentators suggest you need around \$200,000 in super to make the costs of a self-managed superannuation fund (SMSF) worthwhile. They say that with less than this amount, the fund may have difficulty earning enough to make set-up and running costs worthwhile.

SMSFs can typically cost around \$1,700 to run each year, and quite often cost more. Running costs include audit and regular reporting requirements.

Please seek professional help from a licensed financial advisory business.

38. Is financial service fee tax deductible?

The initial upfront cost of putting together a financial plan is not tax deductible but the ongoing service fees that are paid to a financial planner (i.e. monthly cost ongoing) is tax deductible.

The view is that with the first, while it is a cost that is incurred to set up the opportunity to receive assessable income, it occurs prior to the income being earned.

The ongoing fee is deductible as it is incurred 'in' producing assessable income, i.e. investment income.

39. What is the 90/10 rule?

If a self-employed person makes personal superannuation contributions and intends to claim a tax deduction this may not be deductible if more than 10% of the person's total assessable income, exempt income and reportable fringe benefits come from eligible employment from an employer as a PAYG.

EXAMPLE:

Mike, who is now a self-employed person, worked full-time for an employer during the first three months of the year. Mike's employer provided superannuation support during the period of his employment. On termination, Mike received an ETP from his employer and a payment for unused annual leave. The sum of these payments and Mike's wages was \$10,000. Business income for the year amounted to \$30,000.

As Mike's income from eligible employment is greater than ten per cent of his assessable income he is not entitled to a deduction for any personal superannuation contributions made in respect of that year.

TRAVEL ALLOWANCE

40. What is travel allowance?

A travel allowance is defined as an allowance paid by an employer to cover expenses for accommodation, food, drink or other “incidental” costs incurred by an employee in travel away from the employee’s ordinary residence and within or outside Australia, in the course of their duties.

Part day travel allowances (where the employee does not sleep away from home) are not covered by these reasonable travel allowance rules.

TD 2008/18 sets out the reasonable amounts for daily travel allowances expenses, according to salary levels and destinations.

Key points from the Ruling about claiming travel allowance expenses and overtime meal allowance expenses are:

- Claim must be allowable – A deduction claim cannot exceed the amount actually incurred for work-related purposes. The payment of an allowance does not of itself allow a deduction to be claimed.
- Allowance must be paid – The substantiation exception only applies if the employee is paid an overtime meal allowance or a travel allowance. The allowance must have an identifiable connection with the nature of the expense covered.
- For travel allowance expenses – The employee must sleep away from home.
- Substantiation exception – Where the amount claimed is no more than the applicable reasonable amount, substantiation of the claim with written evidence is not required. The substantiation exception does not extend to accommodation expenses, which must still be substantiated by written evidence. In addition, travel records, must still be maintained.
- Claims in excess of reasonable amounts – If the amount claimed is more than the reasonable amount, the whole claim must be substantiated, not just the excess.
- Verification of reasonable claims – In appropriate cases, where the substantiation exception is relied on, the employee may still be required to show:
 - how they worked out their claim;
 - an entitlement to a deduction (for example that work-related travel was undertaken);
 - a bona fide travel allowance was paid; and
 - if accommodation is claimed, that commercial accommodation was used.

The nature and degree of evidence will depend on the circumstances: for example the circumstances under which the employer pays allowances, the occupation of the employee, and the total amount of allowances received and claimed during the year by the employee.

- Tax return treatment – Where a travel or overtime meal allowance which does not exceed the reasonable amounts is not shown on the payment summary, and it has been fully spent on deductible expenses, neither the allowances nor the expenses need be shown on the employee’s tax return. If an amount less than the allowance has been spent, the income tax return must include the allowance and the expense claimed. Whenever a claim is made for overtime meal or travel allowance expenses the allowance must also be included in the tax return.

Reasonable amount for 2008-09

The reasonable amounts for daily travel allowance expenses, according to salary levels and destinations, for the 2008-09 income year are shown in Tables 1 to 6 as follows.

Table 1: Employee’s annual salary – \$90,000 or below

Place	Accomm. \$	Food and drink \$ B’fast 21.10 Lunch 23.65 Dinner 40.65	Incidentals\$	Total \$
Adelaide	145	85.40	15.90	246.30
Brisbane	198	85.40	15.90	299.30
Canberra	133	85.40	15.90	234.30
Darwin	159	85.40	15.90	260.30
Hobart	117	85.40	15.90	218.30
Melbourne	162	85.40	15.90	263.30
Perth	148	85.40	15.90	249.30
Sydney	183	85.40	15.90	284.30
High cost country centres	See Table 4	85.40	15.90	Variable – see Table 4
Tier 2 country centres (see Table 5)	106	B’fast 18.85 Lunch 21.55 Dinner 37.15	15.90	199.45
Other country centres	89	B’fast 18.85 Lunch 21.55 Dinner 37.15	15.90	182.45

Table 2: Employee's annual salary – \$90,001– \$160,100

Place	Accomm. \$	Food and drink \$ B'fast 22.90 Lunch 32.45 Dinner 45.45	Incidentals \$	Total \$
Adelaide	155	100.80	22.70	278.50
Brisbane	228	100.80	22.70	351.50
Canberra	168	100.80	22.70	291.50
Darwin	170	100.80	22.70	293.50
Hobart	150	100.80	22.70	273.50
Melbourne	192	100.80	22.70	315.50
Perth	184	100.80	22.70	307.50
Sydney	200	100.80	22.70	323.50
High cost country centres	See Table 4	100.80	22.70	Variable – see Table 4
Tier 2 country centres (see Table 5)	127	B'fast 21.10 Lunch 21.55 Dinner 41.95	22.70	234.30
Other country centres	107	B'fast 21.10 Lunch 21.55 Dinner 41.95	22.70	214.30

Table 3: Employee's annual salary – \$160,101 and above

Place	Accomm. \$	Food and drink \$ B'fast 22.90 Lunch 32.45 Dinner 45.45	Incidentals \$	Total \$
High cost country centres	See Table 4	85.40	15.90	Variable – see Table 4
Tier 2 country centres (see Table 5)	106	B'fast 18.85 Lunch 21.55 Dinner 37.15	15.90	199.45
Other country centres	89	B'fast 18.85 Lunch 21.55 Dinner 37.15	15.90	182.45

Table 4: High cost country centres – accommodation expenses

Country centre	\$	Country centre	\$
Ballarat (VIC)	116.00	Kalgoorlie (WA)	116.50
Bendigo (VIC)	122.00	Karratha (WA)	243.50
Broome (WA)	173.00	Kununurra (WA)	147.00
Burnie (TAS)	123.00	Launceston (TAS)	115.50
Cairns (QLD)	120.50	Mackay (QLD)	112.00
Carnarvon (WA)	133.00	Maitland (NSW)	108.00
Christmas Island (WA)	122.50	Mount Gambier (SA)	107.00
Cocos (Keeling) Islands	110.00	Mount Isa (QLD)	115.00
Dampier (WA)	158.50	Naracoorte (SA)	106.00
Derby (WA)	165.00	Newcastle (NSW)	116.50
Devonport (TAS)	115.50	Newman (WA)	150.00
Emerald (QLD)	106.00	Norfolk Island	108.00
Exmouth (WA)	173.50	Pt Hedland (WA)	247.00
Geraldton (WA)	116.00	Pt Lincoln (SA)	106.00
Gladstone (QLD)	111.00	Port Macquarie (NSW)	115.00
Gold Coast (QLD)	135.00	Thursday Island (QLD)	180.00
Halls Creek (WA)	132.00	Warrnambool (VIC)	113.00
Hervey Bay (QLD)	109.50	Weipa (QLD)	138.00
Horn Island (QLD)	139.00	Wilpena-Pound (SA)	135.00
Jabiru (NT)	190.00	Wonthaggi (VIC)	122.00
Kadina (SA)	107.00	Yulara (NT)	313.00

Table 5: Tier 2 country centres

Country centre	Country centre
Albany (WA)	Geelong (VIC)
Alice Springs (NT)	Horsham (VIC)
Bairnsdale (VIC)	Innisfail (QLD)
Bathurst (NSW)	Port Augusta (SA)
Bordertown (SA)	Portland (VIC)
Bright (VIC)	Renmark (SA)
Broken Hill (NSW)	Roma (QLD)
Bunbury (WA)	Orange (NSW)
Castlemaine (VIC)	Seymour (VIC)
Ceduna (SA)	Swan Hill (VIC)
Dalby (QLD)	Townsville (QLD)
Dubbo (NSW)	Wagga Wagga (NSW)
Echuca (VIC)	Whyalla (SA)
Esperance (WA)	Wollongong (NSW)

Table 1: Table of Countries

If a country is not listed in Table 1 use the reasonable amount in Table 2 for Cost Group 1.
For an explanation of Cost Groups see Table 2 below

Country	Cost Group	Country	Cost Group
Albania	2	Estonia	3
Algeria	3	Ethiopia	1
Angola	6	Fiji	2
Antigua and Barbuda	5	Finland	6
Argentina	2	France	6
Austria	5	Gabon	6
Azerbaijan	4	Gambia	3
Bahamas	5	Georgia	2
Bahrain	2	Germany	5
Bangladesh	2	Ghana	2
Barbados	5	Gibraltar	4
Belgium	5	Greece	5
Bermuda	5	Guatemala	2
Bolivia	1	Guyana	2
Bosnia	2	Hungary	3
Brazil	5	Iceland	6
Brunei	2	India	5
Bulgaria	3	Indonesia	2
Burkina Faso	3	Iran	1
Cambodia	2	Irish Republic	5
Cameroon	3	Israel	5
Canada	4	Italy	5
Chile	2	Jamaica	3
China (includes Macau & Hong Kong)	3	Japan	5
Colombia	3	Jordan	3
Congo Democratic Republic	5	Kazakhstan	3
Cook Islands	3	Kenya	2
Costa Rica	2	Korea Republic	5
Cote D'Ivoire	5	Kuwait	4
Croatia	4	Laos	1
Cuba	3	Latvia	3
Cyprus	5	Lebanon	3
Czech Republic	5	Libya	2

Country	Cost Group	Country	Cost Group
Denmark	6	Lithuania	3
Dominican Republic	3	Luxembourg	5
East Timor	2	Macedonia	2
Ecuador	2	Malawi	2
Egypt	2	Malaysia	2
El Salvador	2	Mali	4
Eritrea	2	Malta	5
Mauritius	2	Senegal	4
Mexico	2	Serbia	3
Monaco	6	Sierra Leone	3
Morocco	3	Singapore	4
Mozambique	2	Slovakia	3
Myanmar	2	Slovenia	2
Namibia	2	Solomon Islands	2
Nepal	2	South Africa	1
Netherlands	5	Spain	5
New Caledonia	6	Sri Lanka	2
New Zealand	3	Sudan	5
Nicaragua	2	Surinam	2
Nigeria	5	Sweden	5
Norway	6	Switzerland	5
Oman	3	Syria	2
Pakistan	2	Taiwan	3
Panama	2	Tanzania	2
Papua New Guinea	2	Thailand	2
Paraguay	1	Tonga	2
Peru	2	Trinidad and Tobago	4
Philippines	2	Tunisia	2
Poland	5	Turkey	5
Portugal	5	Uganda	2
Puerto Rico	4	Ukraine	5
Qatar	4	United Arab Emirates	5
Romania	3	United Kingdom	5
Russia	6	United States of America	4
Rwanda	2	Uruguay	2
Saint Lucia	3	Vanuatu	3
Saint Vincent	2	Venezuela	3
Samoa	2	Vietnam	2
Saudi Arabia	2	Zambia	3

Table 2: Reasonable amounts by cost groups

Cost Group	Salary \$90,000 and below			Salary \$90,001 to \$160,100			Salary \$160,101 and above		
	Meals	Incidentals	Total	Meals	Incidentals	Total	Meals	Incidentals	Total
1	\$65	\$25	\$90	\$90	\$25	\$115	\$115	\$30	\$145
2	\$80	\$30	\$110	\$110	\$35	\$145	\$140	\$40	\$180
3	\$115	\$35	\$150	\$140	\$40	\$180	\$170	\$45	\$215
4	\$145	\$35	\$180	\$175	\$45	\$220	\$205	\$50	\$255
5	\$185	\$40	\$225	\$225	\$50	\$275	\$265	\$600	\$325
6	\$215	\$45	\$260	\$270	\$50	\$320	\$310	\$600	\$370

Note: These amounts are determined by the Commissioner solely as the amounts that will be accepted for the exception from the requirement to obtain written evidence for substantiation purposes (refer to paragraph 33 of Taxation Ruling TR 200416).

Example: calculation of reasonable daily overseas travel expense amounts

An employee travels to Brazil on business for two weeks and is paid a travel allowance of \$350 per day (\$150 for meals and incidentals and \$200 for accommodation). The employee's annual salary is \$86,000. The reasonable daily overseas travel allowance expense claim is calculated as follows:

Schedule 1 Table 1 lists Brazil as Cost Group 5.

Using Table 2, at a salary of \$86,000 per year, the reasonable overseas travel allowance amount for meals and incidental expenses for Cost Group 5 (which covers Brazil) is \$225.

The employee claims a deduction for meals and incidental expenses actually incurred of \$200 per day. As the employee is claiming a deduction that is less than the reasonable amount of \$225 per day, the employee does not need to keep written evidence to substantiate expenditure on meals and incidental expenses. The employee is required, however, to maintain a travel record and to keep receipts or other documentary evidence to substantiate accommodation expenses.

Source: <http://law.ato.gov.au/atolaw/view.htm?docid=txd/td200818/nat/ato/00001>

41. How is it different from the Living Away from Home Allowance?

Travelling allowances are part of the employee's assessable income and are not fringe benefits whereas Living Away from Home Allowances (LAFHAs) are a fringe benefit.

The following table sets out some of the indicators of whether the allowance is an LAFHA or travelling allowance:

Living-away-from-home allowances	Travelling allowances
This is paid where an employee has taken up temporary residence away from their usual place of residence in order to carry out duties at a new, but temporary, workplace.	This is paid because an employee is travelling in the course of performing their job.
There is a change of job location in relation to paying the allowance.	There is no change of job location in relation to paying the allowance
Where an employee is living-away-from-home, it is more common for that employee to be accompanied by their spouse and family.	Where an employee is travelling, they are generally not accompanied by their spouse and family
They are paid for longer periods.	They are paid for short periods
They change residence (temporarily) in relation to the payment of the allowance.	They have no change of residence

As a practical general rule, where the period away does not exceed 21 days, the allowance will be treated as a travelling allowance rather than a LAFHA.

42. What if I am travelling overseas, can I claim travel allowance expenses?

The same rules that apply to domestic travel allowance expenses will apply for travel outside Australia apply to overseas travel.

WORK RELATED EXPENSES:

43. What can I claim under work related expenses?

The basic rules to consider when making a claim:

- (I) You must have incurred the expense in the "relevant year of income" of tax return.
- (II) You cannot claim an expense that your employer or any other person has or will reimburse you for.
- (III) You must have incurred the expense in the course of earning your assessable income and it must not be private, domestic or capital in nature. For example, the costs of normal travel to and from work or buying lunch every day at work are private. If an expense has been incurred for both work-related and private or domestic, you can only claim a deduction for the work related portion of the expense.
- (IV) You must be able to substantiate your claims with written evidence if the total you are claiming for expenses, not including claims for car, meals allowance, award transport payments allowance and travel allowance expenses is greater than \$300.
- (V) You need to be able to show how you worked your claims if the total you are claiming is \$300 or less – you do not need written evidence.
- (VI) If you have incurred an expense for services paid in advance, some or all the expense may be allowable in the relevant financial year.

Advance expenditure:

If you prepay for a service costing \$1,000 or more and the service extends for a period of at least 12 months, the apportionment rules apply.

Under these rules you may be entitled to claim only part of the expenditure this year and the rest in future tax returns.

Allowances:

Receiving an allowance from your employer does not automatically entitle you to a deduction. You must still meet the basic rules to make a claim.

You can only claim the total amount you incurred even if the allowance is more. For example, if you received a tools allowance of \$500 and your actual tool expenses were \$400, you must include the whole amount of the allowance as income on your tax return and the deduction you can claim is limited to \$400.

Allowable deductions:

Repairs:

Expenditure incurred in repairing income-producing assets such as rental properties is an allowable deduction. A deduction for repairs is only allowable if the money is expended on general maintenance and not on replacing or improving the asset.

Improvements are deemed capital in nature and are non-deductible.

If the asset being repaired is used partly for non-income producing purposes, then repair costs need to be apportioned between the business and non-business use.

Example: Replacing rotten floorboards in a rental property is an allowable deduction for repairs. However, replacing the entire floor with a concrete floor is an improvement so it would not be an allowable deduction for repairs.

Car expenses:

Car travel associated with the earning of assessable income may be tax deductible. Trips between home and work are generally not allowable as a deduction, although there are some exceptions.

These exceptions are:

- If your car is used to carry heavy or bulky equipment, then you may claim the cost of transporting the equipment in the car between home and work.
- A deduction can also be claimed when your home is the base of your employment. That is, you start work at home and then travel to a workplace to continue the work. You may also have irregular places of employment (i.e. working at more than one site each day before returning home).
- Car expenses can also be claimed when you have more than one place of employment. That is, you have more than one employer and you travel directly from one job to another.

There are four methods of claiming car expenses are:

Method 1 – Cents per kilometre method

- If you use this method:
- you do not need written evidence but you may need to be able to show how you worked out your business kilometres
- your claim is based on a set rate for each business kilometre, and
- you are able to claim a maximum of 5,000 business kilometres even if you have travelled more.

Rates per business kilometre

Engine capacity		Cents per kilometre
Ordinary car	Rotary engine car	2008-09 income year
1600cc (1.6 litre) or less	800cc (0.8 litre) or less	63 cents
1601cc - 2600cc (1.601 litre - 2.6 litre)	801cc - 1300cc (0.801 litre - 1.3 litre)	74 cents
2601cc (2.601 litre) and over	1301cc (1.301 litre) and over	75 cents

For example, if you travelled 5,085 business kilometres and you want to use this method, you can only claim the cost of travelling 5,000 kilometres. You cannot claim for the extra 85 kilometres.

Method 2 – 12 % of original value method

If you bought the car, you can claim 12 % of the cost of the car. If you leased the car, you can claim 12 % of its market value at the time that you first leased it.

- Your car must have (or would have if you had it for the whole financial year) travelled more than 5,000 business kilometres during the financial year.
- The maximum allowable deduction is 12 % of the luxury car limit (\$57,180) in the year in which you first used or leased the car.

You do not need written evidence if you use this method, but you may need to be able to show how you worked out your business kilometres.

Method 3 – One-third of actual expenses method

This method allows you to claim one-third of each car expense. Car expenses do not include capital costs, such as the initial cost of your car or improvements to your car.

- Your car must have (or would have if you had it for the whole financial year) travelled more than 5,000 business kilometres during the financial year.
- You need written evidence for all car expenses except for fuel and oil costs.
- There are two ways to work out fuel and oil costs. Use your fuel and oil receipts if you have them or keep odometer records and make a reasonable estimate based on those records.

Odometer records need to show the odometer reading of the car at the start and end of the period that you owned or leased the car. They should also show the car's engine capacity, make, model and registration number.

You may also need to show how you worked out your business kilometres and any reasonable estimate you made.

Method 4 – Logbook method

If you use this method your claim is based on the business use percentage of each car expense.

You need to keep:

- a logbook to calculate the business use percentage
- odometer readings for the start and end of the period you owned or leased the car, and
- written evidence for all car expenses, except for fuel and oil costs.

Your logbook is valid for five years. You must have kept a logbook during the first year this method is used. The logbook must cover at least 12 continuous weeks.

If you started to use your car for business purposes less than 12 weeks before the end of the income year, you are able to continue to keep a logbook into the following income year so that your logbook covers the required 12 weeks. If you want to use the logbook method for two or more cars, the logbook for each car must cover the same period.

If you did not keep a new logbook you cannot use the logbook method.

Your logbook must contain the following information:

- when the logbook period begins and ends
- the car's odometer readings at the start and end of the logbook period
- the total number of kilometres that the car travelled during the logbook period
- the number of kilometres travelled for work activities based on journeys recorded in the logbook. If you make two or more in a row on the same day, they can be recorded as a single journey, and
- the business use percentage for the logbook period.

You can choose the method which gives the largest deduction providing you have the requisite evidence for the method being used.

If you are using a logbook from an earlier year that established your business use percentage, you need to keep that logbook and maintain odometer records.

You also need a logbook if the Tax Office told you in writing to keep one. Pre-printed logbooks are available from stationery suppliers or you can draw up your own.

Travel expenses:

You may claim travel expenses directly connected to your work, such as:

- meals
- accommodation
- incidentals
- interstate conference expenses
- bus, air, train, tram and taxi fares
- bridge and road tolls
- parking and car hire fees

If the travel was private and part work related then only the amount relating to work can be claimed. The claims are of course, subject to the substantiation rules.

Interest:

Interest can be claimed as a deduction where the money was borrowed to gain or produce assessable income or in carrying on a business to produce assessable income.

In deciding whether it is deductible, it is necessary to consider what the borrowed money was used for. A deduction will not be allowed if the money was used for purchasing non-income producing or private assets.

Borrowing expenses:

Typical borrowing expenses include

- mortgage fees
- application fees
- stamp duty
- legal fees and
- valuation fees

Any expense incurred in borrowing money that is then used to produce assessable income is an allowable deduction.

If the total costs associated with obtaining of borrowings are less than \$100, the whole amount can be written off in the year of income in which the loan is obtained. If the costs are greater than \$100, then the yearly deduction will depend on the period for which the money was borrowed, up to a maximum of 5 years.

Tax related expenses:

A deduction is allowed for expenditure incurred in connection with:

- management of tax affairs
- administration of tax affairs
- costs of preparing taxation returns and
- costs of preparing amendments and lodging appeals

Fees or commissions for professional advice in relation to income tax affairs are deductible only where a registered tax agent, or a barrister or solicitor provides the advice.

Penalty tax and fines imposed by the ATO are not an allowable deduction.

Self-education expenses:

You can only claim deductions for the expenses associated with self-education that are related to your income earning activities while you are studying.

If your self-education was to help you get a new job, you cannot claim your expense. It must relate to your current job position. You must have undertaken the course to gain a formal qualification for use in carrying on a profession, business or trade or in the course of employment.

Generally, you can claim a deduction for expenses that you incur in activities that:

- maintain or improve the knowledge and/or skills that you exercise in your current income earning activities; or
- are likely to lead to an increase in income from your current income earning activities

You cannot claim a deduction for self-education expenses for a course that does not have a sufficient connection to your current employment even though:

- it might be generally related to it (see example 1), or
- it enables you to get new employment.

Example

Louis, a computer science student, works at the university laboratory installing computers. The course and the job are generally related, and what Louis learns might help him in his job.

However, the high level professional skills Louis acquires are well beyond the skills required for his current job and employment. Consequently there is not a sufficient connection between his job and his course, and he cannot claim a deduction for work-related expenses for his course.

There are 4 categories of expenses associated with self-education.

Category A

General expenses that are allowable as a deduction and include:

- tuition and course fees
- textbooks
- professional and trade journals
- stationary
- photocopying, accommodation and meal expenses if you are away from home overnight in connection with work related study activities
- if you have a room set aside for work-related study purposes, running cost expenses such as heating, cooling and lighting expenses. You cannot claim a deduction for occupancy expenses such as mortgage interest, rent, house insurance, council and water rates, or repairs.

In most cases, Category A expenses must be reduced by \$250. That is, the first \$250 of these expenses is not deductible.

Category B

This category includes deductions for the decline in value of depreciating assets used for self-education purposes, including a car for which you are claiming deductions under the “log-book” or “one-third of actual expenses” method. Examples of depreciating assets include:

- computers
- professional libraries
- desks
- filing cabinets
- calculators
- technical instruments
- other equipment

You can also claim interest on money borrowed, where the funds are used to pay for your self-education expenses.

Category C

This includes repairs to items of equipment used for self-education expenses (e.g. Repair to home computer/printer/car).

Category D

Car expenses related to your self-education activities, which are claimed using the “cents per kilometre” or “12% of original value” methods. You cannot claim car expenses under the category if you have included deductions for decline in value or repairs to your car under categories B or C.

An alternative to this claim is travel expenses related to your self-education activities. For example, if you are required to travel to a place of education by public transport. Whether claiming car or travel expenses, you can only claim expenses for travel between:

- Home and your place of education
- Your place of education and home
- Work and your place of education, and
- Your place of education and work.

However, if you travel from home to your place of education and then to work (or vice versa), only the first leg of each trip is deductible. That is home to your place of education or work to your place of education.

Note: Category B, C and D expenses do not have to be reduced by \$250.

Category E

Self-education expenses incurred that are not allowable as a deduction include:

- Child care costs related to attendance at lectures or other self-education activities, or
- Capital cost of items acquired in the relevant tax year and used for self-education purposes (e.g. a computer or a desk).
- No HECS/HELP payments are allowable as a tax deduction.

If the Category B, C, D & E expenses are at least \$250, you do not need to reduce your claim. If the total of these expenses is less than \$250, then your claim must be reduced by an amended amount.

Example

John has category A expenses of \$1200. The total of his B, C, D & E expenses is \$180. Therefore $\$250 - \$180 = \$70$. This is the amount by which you must reduce your total claim.

Category A	\$1,200
Other expenses	\$180
Less:	(\$70)
Net claim	\$1,310

For more examples, please refer to the ATO website:

<http://www.ato.gov.au/individuals/content.asp?doc=/content/18843.htm&page=4&H4>

Self-education expenses calculator: <http://www.ato.gov.au/individuals/content.asp?doc=/content/49685.htm>

Source: <http://www.ato.gov.au/individuals/content.asp?doc=/content/18843.htm>

Gifts/Donations:

Certain organisations can receive income-tax deductible gifts or donations of \$2 or more. These are known as “deductible gift recipients”. Examples include

- Public benevolent institutions
- Public hospitals
- School building funds and
- Public libraries

There are over 30 of these categories.

You can find a list of DGRs here:

<http://www.abn.business.gov.au/%28510ygnr5u2ybkiummyglkar%29/content.asp?page=dgrListing>

If you are receiving something for your donation such a pen, raffle ticket or a reduction in your child’s school fees, then you are unable to claim a tax deduction.

Home Office expenses:

If you do work relating to your business, job or profession at home, you may be entitled to claim a deduction for some of the expenses relating to the area of your home that you use for income producing purposes.

You can claim the “running expenses” of a home office if you carry on part or all of your employment activities at home.

Example

Barrister who reads client briefs at home or a teacher who prepares lessons and/or marks assignments at home.

You can claim the “additional running expenses” of a home if you use:

- A room of work related purposes at a time when others are not present, or
- A separate room

This is the case even if the room used is not aside solely for work related purposes. Additional running expenses include:

- Heating
- Cooling
- Lighting
- Repairs to home office furniture and fittings.

The following costs cannot be claimed as a work related expense:

- Occupancy expenses (e.g. Mortgage interest, rent, rates, house insurance and repairs), and
- Running expenses incurred if you sit in the lounge room with other family members and perform work related activities at the same time.

Note: To be able to claim the occupancy expenses, you must be able to demonstrate that your home is your principal place of business. If you use your home to carry out income producing activities as a matter of convenience, you are not entitled to a deduction for occupancy expenses. It would be extremely rare for an employee to be able to claim occupancy expenses.

If your home qualifies for a deduction for occupancy expenses and you own it, capital gains made on disposal of the home may be taxed on that portion of the home used as a “place of business” for the period it is used for that purpose.

Example

A salesperson in the country whose city-based employer does not provide an office for them.

Record keeping for Home office expenses:

You can keep a diary to work out the home office running expenses. Alternatively, you can use a fixed rate of 26 cents per hour (as set by the ATO) for home office expenses such as heating, cooling and lighting and the decline in value of furniture instead of keeping details of actual costs.

Tools of trade:

Expenditure incurred by an employee in purchasing loose tools and equipment used in carrying out the duties of a trade, profession or occupation qualify as outgoings incurred in gaining or producing assessable income.

Accordingly, providing the expenditure is not of a capital nature, a deduction is allowable.

Tools that cost in excess of \$300 are considered to be capital in nature and must be depreciated over the effective life of the tools. Those that cost less than \$300 can be deducted in full in the year in which the cost is incurred.

Uniforms:

To claim the cost of buying, renting, repairing or cleaning uniforms the clothing must be “occupation specific” (e.g. a chef’s checked pants). Protective clothing is also claimable. It must be clothing that protects from injury (e.g. safety boots, overalls, dust jackets and aprons). Ordinary “street” clothes are not considered occupation specific and are therefore not deductible.

Dry Cleaning:

See above.

Insurance:

A deduction is allowed for insurance premiums on buildings, machinery and equipment used for business purposes and sickness/accident premiums paid by a self-employed person. Income protection insurance paid by an employee.

Sun protection items:

You may be eligible to claim a deduction for sun protection items if your job requires you to work in the sun for all, or part of the day.

If your employer provided you with sun protection items, you cannot claim a deduction for them because for them because you have not incurred the cost of purchasing the item.

Telephone and other work related expenses:

You can claim a deduction for the cost of work related telephone calls and telephone rental.

Note: Telephone rental can only be claimed if you can show you are “on-call” or are regularly required to telephone your employer or clients while you are away from your workplace.

You may also be able to claim a deduction for the work related portion of the rental cost, or of the decline in the value of the following:

- Mobile Phone
- Answering machines
- Pagers
- Beepers

- Other telecommunications equipment

The following costs cannot be claimed as a deduction:

- The costs of installing a telephone at home that is used for work related calls, and
- The cost of maintaining a silent number

Seminars, conferences and workshops:

You can claim a deduction for the cost of attending seminars, conferences or education workshops that are sufficiently connected to your work activities. The following expenses can be claimed:

Travel costs including:

- Fares
 - Accommodation
 - meals
 - Registration and conference materials

Note: Although conference and seminar fees are deductible, there are restrictions on deducting associated entertainment expenses and any associated travel costs may have to be apportioned where you also incorporated a private purpose whilst away attending a conference (e.g. Visiting family and friends)

Overtime meals:

You can claim a deduction for overtime meal expenses you incurred if you received an overtime meal allowance from your employer that was paid under an industrial law, award or agreement.

You can only claim the amount of expenditure you incurred. If the claim is more than \$20.55 per meal you will need written evidence.

Amount received as overtime meal allowance must be included as income on your tax return.

Non-deductible expenses:

You cannot claim a deduction for the following expenses:

- Childcare expenses
- The cost of getting or renewing a driver's licence
- Fines (e.g. Speeding or parking fines even where they were incurred while you were on the job).
- Glasses and contact lenses (net medical expenses tax offset)
- Meals – with the exception of overtime meal allowance expenses and meal expenses incurred during work related travel away from the normal residence.

- Police clearance certificates
- Removal and relocation costs – because the expenses come at a time too early to be regarded as being incurred to gain assessable income.
- Social club fees
- Social functions (e.g. The cost of attending staff dinners)
- Union joining fees
- Vaccinations
- Ordinary wristwatches (fob watches allowed for nurses)

FOREIGN INCOME:

44. I am an Australian resident but will be travelling overseas (e.g. 6 months) for my contract role. Where is my tax liability due?

If you are an Australian resident for tax purposes, you must pay tax in Australia on income from both Australia and overseas. However, in some circumstances your foreign employment income may be exempt from Australian tax.

Exemptions:

- You are an Australian resident, and
- You are engaged in continuous foreign service in a foreign country as an employee for 91 days or more, and
- You received foreign earnings that are not covered by the disqualifying conditions.

INSURANCES:

- Why do I need my own work cover for the company Pty Ltd structure?
- Why should I pay CWM COMPANY 2% when I can have my own insurances for the Pty Ltd company structure?

There are mainly 2 benefits for using CWM COMPANY for your Pty Ltd company structure:

- No upfront costs:
Ongoing Compliance costs:
Administration pay structure queries:

MEDICARE LEVY AND SURCHARGE:

45. What is Medicare levy and do I have to pay for it?

Medicare is the scheme that gives Australian residents access to health care. Normally, it is calculated at the rate of 1.5% of your taxable income.

You may qualify for an exemption from paying the Medicare levy if you were in any of the following three exemption categories at any time in the financial year.

These categories are:

- Medical - You are in this exemption category and can claim a full or half exemption if:
 - one of the following applied during all or part of the financial year:
 - you were a blind pensioner
 - you received sickness allowance from Centrelink
 - you were entitled to full free medical treatment for all conditions under Defence Force arrangements or Veterans' Affairs Repatriation Health Card (Gold Card) or repatriation arrangements,
- Foreign residents and residents of Norfolk Island - If you were a foreign resident or a resident of Norfolk Island for the full year, you can claim a full exemption for the year (365 days).
- If you were a foreign resident or a resident of Norfolk Island for only part of the year, you can claim a full exemption for that period if:
 - you did not have any dependants for that period or
 - all your dependants were in an exemption category for that period.
- Not entitled to Medicare benefits - You can claim a full exemption for any period for which you have a certificate from the Medicare Levy Exemption Certification Unit of Medicare Australia showing you were not entitled to Medicare benefits because you were a temporary resident for Medicare purposes and either:
 - you did not have any dependants for that period, or
 - all your dependants were in an exemption category for that period.
 - you were a member of a diplomatic mission or consular post in Australia (or a member of such a person's family and you were living with them)
 - you were not an Australian citizen
 - you do not ordinarily live in Australia, and either:
 - you did not have any dependants for that period, or
 - all your dependants were in an exemption category for that period.

For more information on how to apply for an exemption certificate as a temporary resident, contact Medicare Australia on 1300 300 271 or visit their website at www.medicareaustralia.gov.au.

Source: <http://www.ato.gov.au/individuals/content.asp?doc=/content/40501.htm&page=1&H1>

There is also Medicare levy reduction depending on individual situation.

Medicare levy reduction for low income earners.

Your circumstances	What to do
Your taxable income is equal to or less than your lower threshold amount	You do not have to pay the Medicare levy
Your taxable income is greater than your lower and less than or equal to your upper threshold amounts	You pay only part of the Medicare levy.
Your taxable income is over your upper threshold amount, and you are single with no dependants.	You do not qualify for a reduction.
Your taxable income is over your upper threshold amount but you: <ul style="list-style-type: none">• had a spouse (married or de facto)• had a spouse that died during the year, and you did not• are entitled to a child-housekeeper or housekeeper tax offset, or• were a sole parent at any time during 2008-09 and you had sole care of one or more dependent children.	You may be eligible for a Medicare levy reduction based on family taxable income. <ul style="list-style-type: none">• First work out your family taxable income.• Then work out your family taxable income limit.

For individual taxpayers, the low income threshold varies from \$17,794 to a maximum of \$20,934.

Alternatively, you can use the Medicare levy calculator on the ATO website to work out your Medicare levy - <http://www.ato.gov.au/individuals/content.asp?doc=/content/32020.htm>

Source: <http://www.ato.gov.au/individuals/content.asp?doc=/content/40500.htm>

46. What is Medicare levy surcharge?

The Medicare Levy Surcharge is levied on Australian taxpayers who do not have private hospital cover and who earn above a certain income. The surcharge aims to encourage individuals to take out private hospital cover, and where possible, to use the private system to reduce the demand on the public system.

The surcharge is calculated at the rate of 1% of taxable income. It is in addition to the Medicare Levy of 1.5%, which is paid by most Australian taxpayers. The Medicare Levy

Surcharge is imposed on individuals earning over the threshold who do not have an appropriate level of hospital insurance.

You do not have to pay the surcharge if your taxable income is below the income threshold.

Currently you have to pay the surcharge if you are:

- a single person with an annual taxable income greater than \$77,000 in the 2010-11 financial year (previously \$73,000 in 2009-10); or
- a family or couple with a combined taxable income greater than \$153,000 in the 2010-11 financial year (previously \$146,000 in 2009-10). The family income threshold increases by \$1,500 for each dependent child after the first;
- and do not have an approved hospital cover with a registered health insurer.

To avoid the surcharge, you must have a hospital cover policy with a low front-end deductible or excess:

- equal to or less than \$500 per annum for single policies, or
- \$1,000 per annum for families/couples.

47. How can I avoid paying the Medicare levy surcharge?

You do not have to pay the surcharge if:

- your taxable income is below the income thresholds (as above),
- your taxable income is over the income threshold and you have hospital insurance for you and all of your dependents with a registered health insurer,
- you are normally exempt from the Medicare levy because you are a prescribed person and you do not have any dependents. Your taxable income is not considered in this case,
- you are a high-income earner who had already purchased a hospital insurance product with a front-end deductible or excess greater than \$500 for singles or \$1,000 for families/couples, on or before 24 May 2000. In this case you will continue to be exempt from the surcharge as long as you maintain continuous membership under the same hospital treatment policy.

To be exempt from the surcharge, your hospital cover must be held with a registered health insurer and cover some or all of the fees and charges for a stay in hospital. General treatment cover without hospital cover will not provide an exemption.

For more information please read: <http://www.ato.gov.au/individuals/pathway.asp?pc=001/002/030>

GLOBAL CONTRACTING AND TAX FRIENDLY COUNTRIES

Many would say that “tax” and “friendly” are two mutually exclusive words. This would appear to be the case in most countries. Many governments recognise the need to attract professionals, and have made visa acquisition simpler to facilitate this, but have failed to advise their tax collectors that these highly mobile project driven individuals are desired citizens and expatriates. The application and processing of visas is a very specialist area, and is best left to those who know the rules. Suffice to say that contracting is a lucrative option to most professionals and specialists in most fields, and the appropriate visas are generally obtainable (see web references at end).

Because of the nature of client requirements, the Information Technology industry has traditionally been project driven, leading to a great demand for contractors and specialists. More and more accountants and lawyers are now being offered contract positions.

Conversely, in the past 2 years, most revenue and tax collectors around the world have chosen to target the contractor sector. In the United Kingdom, we have seen the introduction of IR35 legislation, in Australia there has been the Alienation of Personal Services Income Act 2000 which accompanied the GST legislation, in New Zealand we have seen similar Avoidance Legislation.

Australia

The tax in Australia is applied at various levels. The top marginal rate is 47% kicking in at \$60,000 (+/-US\$30,000), and a 1.5% and 2.5% Medicare levy applies. Australia also has a Goods and Services Tax of 10%. It does not end here. Superannuation (pension) is compulsory, at 8% in 2001 and 9% in 2003 and beyond. This contribution is concessional taxed at 15% on contribution and 15% on withdrawal, **except** for high income earners. This tax on superannuation increases by 1% for every \$1,000

earned over \$78,000, and peaks at 30% on all contributions for income earners of over \$93,000 p.a. This compulsory Superannuation has to remain in the country until your retirement age of 60 plus (that is if there is any left after administration fees are deducted).

In June 2000, Australia introduced a new tax system, based on the “Ralph Report” prepared for government. An integral part of this legislation is the Alienation of Personal Services Income Bill, which effectively prevents contractors who derive their income from their “own personal exertion” from gaining any advantage by using a company, sole trader or similar structure to reduce tax liabilities.

Small contractor companies, where the bulk of the income is earned from the personal exertion of the director/shareholder, are being severely disadvantaged. The Alienation of Personal Services Income Bill 2000 legislates that if 80% of your income is from a single source, then you will be treated as a “Personal Services Entity” and this limits the expenses you are able to claim to less than those of a PAYG employee. In the application of this test, they look at the end user as the “employer” **not** the agency. Working for multiple agencies at the same end user does not get around the legislation.

If you are able to pass the 80/20 test, you **also** have to pass other tests.

- The “Enterprise Test” to apply for registration for GST requires;
- That you control the services offered, including the risk
- That you have multiple concurrent clients
- That you have “substantial” investment in equipment

And then the business entity needs to pass **one** of these tests;

- Unrelated Client

A personal services BUSINESS must have multiple and unrelated clients. This negates inter company invoicing and use of investment income.

- Employee Test or

A personal services BUSINESS must employ people to deliver the service other than the principals

- Separate Business premises test

A personal services BUSINESS is expected to have its own premises, not a home office or a serviced office.

Note: This legislation and these tests are well drafted and will not allow evasion by simply joining with others (there are specific streaming provisions which prevent this option) or simple evasion tactics.

Contractors who choose to use their own companies will need to undertake a self-evaluation. They are personally liable for severe penalties if they get this wrong.

There is no doubt that the situation is now far more complex, and the options for tax minimisation have been significantly reduced. The preparation of the quarterly BAS statements have been a time consuming and confusing burden. The Australian Tax Office has removed the option for individual contractors to gain any advantage from running their own company. The “Enterprise Test” and the Personal Exertion tests will negate many personal exertion companies, if not in the first round, then in subsequent audits.

Useful Websites

www.cxcglobal.com
www.kpbiz.com.au
www.connections.com
www.pinggateway.com
www.linkme.com

CXC Global headquarters:
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