

TAX BULLETIN

AN UPDATE PUBLICATION
FOR OUR CLIENTS

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VICTORIAN WORKCOVER AND CONTRACTORS – RECENT AMENDMENTS

Recent amendments to the Victorian WorkCover legislation have been passed by the Victorian Parliament and commence on 1 July 2011. The amendments are contained in Traffic Accident and Accident Compensation Legislation Amendment Act 2010.

The amendments, which resulted from a review of the accident compensation legislation by Peter Hanks QC, are designed to streamline and simplify the legislation which deems an employment relationship for categories of workers who are strictly not employees.

In practice, there are unlikely to be significant differences in what contractors will be subject to Victorian WorkCover from 1 July 2011 when compared to the pre-existing legislation. However, the amendments do mean that certain provisions once aligned with payroll tax will now have significant differences notwithstanding that, in most cases, the same result will be achieved.

As with the pre-existing provisions, the amendments are broadly designed to capture payments to contractors who work solely or mainly for the same principal. The provisions can apply regardless of whether the contractor is a sole proprietor, partnership, company or trust.

The main contractor provision, a new section 8, replaces the former sections 8 and 9, and deems that a contractor engaged by a principal is a worker for Victorian WorkCover purposes if all the following apply:

1. The main purpose of the contract is the provision of labour and not the provision of materials and equipment; and
2. The same individual performs 80% or more of the services under the contract; and
3. At least 80% of the contractor's gross income (based on income for the same type of services) is derived from the principal in question.

Even if all of the above are met, WorkSafe will have the power to exclude a contractor if it determines that the contractor is carrying on an independent trade or business. What is meant by an independent trade or business will be the subject of guidelines issued by WorkSafe in the lead up to the 1 July 2011 commencement date.

A new section 9 has been inserted which deems a payment from a principal to a contractor (who is a company) to be remuneration and therefore subject to premium. By deeming the payment from the principal to the contractor to be remuneration, it is intended to eliminate the potential for two amounts of premium to be paid for the same work (i.e. by both the principal and the contracting entity) although exactly how this is achieved in the legislation is unclear. In discussions with WorkSafe, it has been indicated that guidelines will be issued explaining how this section will be applied in practice

Other features of the new provisions are:

1. A specific provision has been introduced to deem an individual owner driver (i.e. one who is not working through his or her own company) to be a worker unless they have an independent trade or business. Owner-drivers who are engaged via companies will not be deemed workers of the principal.

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2. An anti-avoidance provision which deems door to door sellers to be workers if they enter a contract designed to avoid the payment of WorkCover premium by any person.
3. As was the case previously, specific provisions have been introduced in relation to certain classes of contractors including timber contractors, taxi drivers and share farmers. These provisions are in substance the same as the pre-existing provisions.

Once further details are released regarding the guidelines being developed by WorkSafe we will issue further comments

FURTHER INFORMATION

Please ask your regular Pitcher Partners tax contact for further details on the issues raised in this Tax Bulletin.

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