

Engaging Contractors - The BBQ Myths Explained

I am often told that engaging contractors is a sham to avoid tax and other levies. Sometimes this view is promoted by those in the HR industry who have a vested interest and sometimes by those with a political agenda. The truth is quite different.

Engaging contractors can be a legitimate way to reduce your business costs and exposure to employee risk and cost

Fair Work and Employment Law Compliance - The First Consideration

This should be your first consideration because the regulations may prohibit you from restructuring an existing position in your business or may restrict you from engaging new personnel on a contract basis. All employers have obligations to comply with federal and state employment law and that law can be complex. If you are contemplating restructuring your staff to contractor positions you should seek qualified advice. If the employment provisions deem your contractor to be an employee then your scope to restructure may be limited.

Presuming you have taken advice and can restructure your business then the following information is important.

The Myth: Engaging Contractors is a Sham to Avoid Tax

In some circumstances the contracting arrangements can be considered a sham but properly established they can save tax and other business costs such as superannuation guarantee, Workcover, and PAYGW. Of course, the opposite may be true if you are a contractor and your entitlements may be reduced so it is important to understand those implications.



The Myth is Busted

Engaging contractors to resource your business is a legitimate and legal arrangement. Properly implemented they do not deprive the tax office or other government agencies of appropriate levies and dues but work completely within the legal framework. To maximise the outcomes, any restructure must be properly implemented or you will risk them being overturned by the ATO, Workcover, or Fair Work.

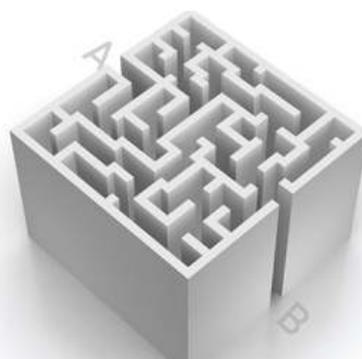
The Myth: Have Staff Invoice You for Their Work and Don't Pay Super Guarantee

Recently I was talking to a tradie client who had been told his boss wanted to make him a contractor and needed him to have an ABN so he could give him invoices. His boss was also willing to pay him an additional 9.5% on his hourly rate because he was saving on Superannuation Guarantee and my client thought that was a good idea. I agree, it was a good idea for my client but you may be surprised why.

The Myth is Busted

You cannot contract out of the Superannuation Guarantee provisions – FULL STOP!

The best path
forward
in Business
isn't always clear



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Whether you are a contractor or employee your entitlement to receive Superannuation Guarantee from your “employer” is guided by how you are paid. So, if my client was to charge 50% or more of his total invoice for labour at an hourly rate then in almost all circumstances he would be entitled to receive super from his employer in addition to his invoice. The bonus for my client is that he is also entitled to 9.5% on his additional 9.5%!!

If you charge an extra 9.5% to cover your super then you are also entitled to Super Guarantee of 9.5% on that payment too!!

Whether an employer is aware of that or not, and regardless of what the written contract states this is the contractors’ legal entitlement. Unpaid super entitlements are policed by the ATO so in the event of non-payment (even after the contract arrangement has ended) the ATO will ensure his boss is charged the correct amount. And, if the ATO auditor is good at his job you can almost guarantee the employer will be audited for GST, PAYGW, and Income Tax soon after.

The Myth: Contractors Can Employ Their Partners to do Their Bookkeeping

Unfortunately, I have lost clients because I have told them they cannot legally employ their partners to do their bookkeeping. Instead, many prefer to rely their old mate, the BBQ adviser, who is adamant they can pay their partner a full-time wage for doing essentially nothing much at all.

The Myth is Busted

The Mythbusters would say this is plausible and I agree, it may be possible to employ your partner to help in your business, but....



The reason this is not generally allowed is because the PSI rules specifically deny the arrangement. If you are not captured by the PSI rules then we may be able to structure something to allow contractors to employ your partner but with appropriate advice there is no need to manufacture that employment relationship to capture the best tax outcome. This is achieved with the correct business structure.

Even if contractors are entitled to employ their partners, it is not the optimum solution to achieve the best tax outcome. So, for those reasons, I am sticking with BUSTED.

The Myth: Workcover Isn’t Payable on Contractor Payments

Avoid Workcover by engaging contractors and making them get their own insurance. Or the other one I heard recently, pay them cash and don’t tell Workcover.

The Myth is Busted

Paying contractors cash is never a clever idea for two reasons; Firstly, Workcover are very good at conducting audits. Secondly, if the contractor makes a claim refer to the first reason.

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Recently the ATO and Workcover standardised their definition of a “worker” so who is covered by Workcover is very clearly defined. All contractors who are sole traders with individual ABN’s are considered workers. The opportunity for employers is therefore, is to consider restructuring their contract arrangements to engage their contractors through a trust, a company, or even a partnership. Before doing that though take qualified advice because getting it wrong can be costly.

Personal Services Income

It is important for both employers and contractors to properly understand the Personal Services Income (“PSI”) regime and how it operates. Most of the confusion about contractor arrangements is caused by the good old BBQ adviser blending the contractor rules and the personal services income rules.

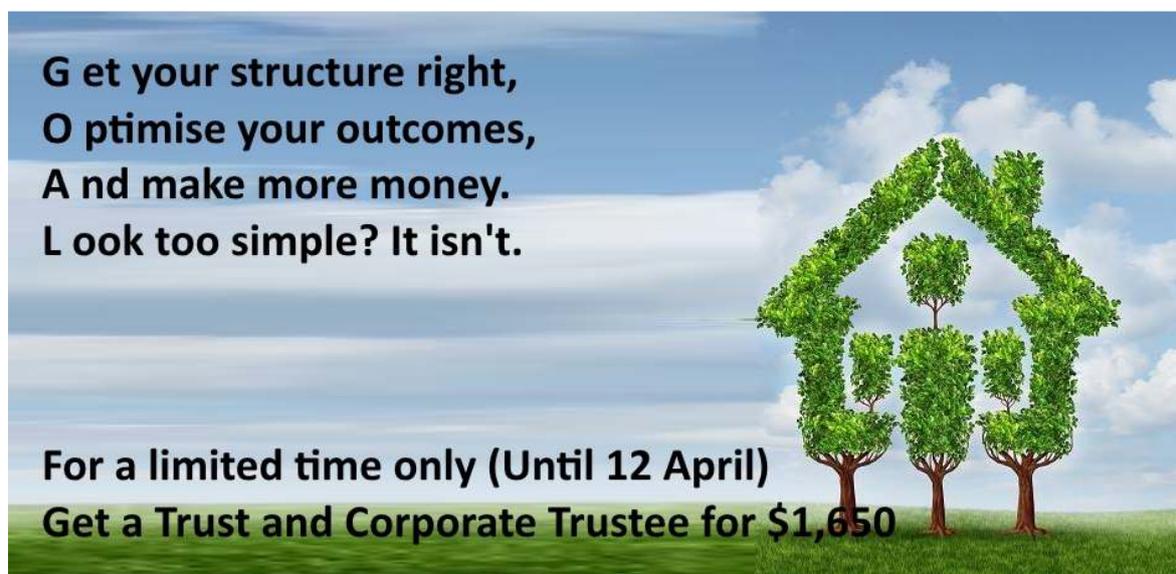
I have written about the PSI rules separately ([CLICK HERE for a copy](#)), give me a call in the office on (07) 5448 9600 for more information, or have a look on our website www.growaccounting.com.au.

Conclusion

If you are an employer, engaging contractors can be a wonderful way to reduce business costs, eliminate some risk, and make more money.

The key to capitalising on this opportunity is to understand the contracting and PSI rules. Take advice from a competent professional adviser and don’t rely on your old mate, the BBQ adviser. More often than not they will just be wrong.

We have made it easy and cheap for you to restructure your contractors. For more information give me a call in the office on (07) 5448 9600 or [CLICK HERE to drop me a message](#).



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