



INFORMATION SHEET

Workplace Services

Current at 26 March 2013
HIA ref no: ZFSTAX0547A

NAT- Superannuation - Pitfalls relating to Contractors

If an individual contractor meets the test for being a labour only or substantially labour only contractor (see below), then he or she will be a “deemed employee” for superannuation purposes and you:

- should be making superannuation contributions for that contractor;
- should be offering that contractor choice of super; and
- may be subject to the Superannuation Guarantee Charge if you haven't already been making contributions.

What is a Labour Only or Substantially Labour Only Contractor?

An individual contractor will be a labour only or substantially labour only contractor if s/he has contracted with you to perform work and:

- is paid wholly or principally for his/her personal labour or skills;
- must perform the contractual work personally (i.e. there is no right to subcontract or use an employee); and
- is not paid to achieve a result.

The ATO will look at both the:

- terms of the written contract; and
- subsequent conduct of both you and the trade contractor.

It does not necessarily matter that the contractor has an ABN or passes some of the APSI tests. The ATO has developed an online decision tool to assist in determining whether your worker is a contractor or employee for the purpose of superannuation contributions. You can access the tool on the [ATO Website](#).

Meaning of Personal Labour or Skills

“Principally” means “chiefly” or “mainly” or “substantially”. “Labour” is not just “physical toil”, but includes “mental & artistic effort”. Generally the contract will be principally for labour if more than half of the value of the contract is for the person's labour.

If your contract is for the person to provide labour and something else (eg the supply of goods, materials, plant or equipment), then you must consider whether the labour component is the major component.

Perform the Work Personally

This means that, if the trade contract allows the trade contractor to use someone else to perform the work, then it is **not** a “labour only or substantially labour only” contract. However, you should be aware that, if you require the trade contractor to perform the work personally, you will be caught, if the other requirements are not met.

DISCLAIMER - The above is intended to provide general information in summary form. The contents do not constitute specific advice and should not be relied upon as such. Formal specific advice should be sought by members with respect to particular matters before taking action.

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Not Paid to Achieve a Result

If the trade contractor has been paid to achieve a result, then s/he will not be regarded as being a labour only or substantially labour only contractor. However, there could be instances where a trade contractor is not engaged to produce a result, and would therefore be caught, if the other requirements are not met.

For more information call the HIA Member Hotline on 1300 650 620