



*The Association of Professional
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26th May 2006

Hon Peter Costello
Treasurer
Parliament House
Canberra ACT 2600

Dear Treasurer,

RE: IMPACT OF INDEPENDENT CONTRACTORS ACT ON PROFESSIONALS

With the imminent tabling of the Independent Contractors Bill, the Association wishes to again raise difficulties experienced by members relating to the application of the Alienation of Personal Services Income (PSI) legislation.

With potentially a greater number of individuals moving across to contracting arrangements, APESMA is concerned at the lack of understanding of the PSI legislation in the professional community. To address this uncertainty, APESMA is proposing a Business expenses test to sit alongside the results test, unrelated clients test, employment test and business premises test. We suggest that payment of workers compensation/salary continuance, superannuation up to the minimum required by the superannuation guarantee legislation, and payment of professional indemnity insurance jointly be considered as factors required to satisfy the proposed business expenses test.

A test such as this would prevent uncertainty in cases where individuals self-assess their Personal Services Business status, and would in many cases obviate the need for a Personal Services Business Determination. It would also mitigate against lost tax revenues where contractors incorrectly self-assess, will ensure that those in non-standard work arrangements continue to contribute to national retirement savings, and that individuals are covered in the case of accidents. It will ensure that those moving across to contracting arrangements will not be hit with the double whammy of an employer no longer paying their workers compensation, superannuation and PI insurance, but also being denied access to legitimate business deductions.

Contractors covering these costs are demonstrating that they are covering expenses attached to undertaking commercial risk, and they should therefore be considered determining factors for deciding personal services business status. With the current skills shortages for professional engineers, this will provide certainty around PSB status, facilitate the choice to move to contracting arrangements, and therefore the increased availability of specialist skills throughout industry.

We also bring to your attention again the fact that many professionals engaged for their business expertise and technical skills on major infrastructure projects or engaged by the same client on successive separate projects may be engaged for a period of time longer than 12 months creating difficulties in relation to the PSI 80/20 Rule. APESMA proposes that rather than being loosely



covered under the unusual circumstances provisions of the Explanatory Memorandum of the Act, that the Act explicitly state that contractors engaged for periods greater than 12 months will be considered personal services businesses if they have in place their own cover for workers' compensation/salary continuance, superannuation and professional indemnity insurance - that is, if they satisfy the business expenses test.

These changes would necessitate only minor amendment to the existing taxation rulings and legislation and would result in greater certainty for the ATO in applying the legislation and for contractors themselves.

I look forward to your response on this long-standing unresolved issue.

Yours faithfully,

A handwritten signature in black ink, appearing to read 'John Vines', with a long horizontal flourish extending to the right.

John Vines
Chief Executive