

SUPER PAYMENTS FOR CONTRACTORS

Most people are aware that an employer is obliged to contribute to an employee's super fund. Did you know that the ATO has now amended the rules for contractors? In short, since 1 July, 2011, if the contractor is paid for his labour, as opposed to being paid on the achievement of a result, the ATO now deems that contractor to be an employee and the employer is therefore liable to make super contributions on behalf of the employee.

Failure to make payments can render the employer liable for the Superannuation Guarantee Charge. This consists of any outstanding super payments, interest on those outstanding payments at 10% and an administration fee of \$20.00 per employee per quarter.

Although contributions to super funds are tax deductible by the employer, interest on late payments and the administration charge are not.

In many cases, employees are claimed to be contractors. In simple terms, this means that the employee is treated as being a self - employed person, who is responsible for making his or her own tax and super arrangements. Many such arrangements have been found to be a sham.

For example, if a builder is contracted to build a house, and the contract provides payment in stages (e.g. on laying of the slab, practical completion and the like), the builder will not be an employee of the property owner. However, any tradesmen who are personally (as opposed to through a company) subcontracted by the builder at an hourly or daily rate will be entitled to have payments made into their superannuation fund.

While the Government seems to be expanding the categories of persons who are entitled to have super contributions made by their employer, it does not seem to be so quick in enforcing payment of that liability. The Director's Penalty Notice provisions, which make a director personally liable for outstanding tax due, do not apply to superannuation payments. If the employer company goes into liquidation, the employee cannot claim superannuation payments as part of the GEERS Scheme, which in effect pays employees any outstanding wages, and then substitutes the Commonwealth for the employee as a creditor in the liquidation.

Please contact us on 07 3849 6263 or at reception@oneillslawyers.com.au if we can be of any further assistance.