

Payroll tax - issues to be
aware of

Overview

- ▶ Contractor provisions
- ▶ Employment agency provisions
- ▶ Grouping provisions

Why care?

History

- ▶ Commonwealth Tax
- ▶ States eventually took over, and taxes were raised
- ▶ Ideas thought to 'manage' payroll tax

General principles

- ▶ Wages are taxable
- ▶ Note (as will be discussed) wages extend further than the ordinary interpretation (think contractor arrangements)
- ▶ \$1.1 million threshold
- ▶ 4.75% tax rate
- ▶ Deductions available until wages hit \$5.5 million (i.e. you are not hit with the full 4.75% tax rate initially)

Contractor provisions

- ▶ Certain payments made to contractors are taxable wages
- ▶ Question is whether the arrangement is a 'relevant contract'
- ▶ 13B Payroll Tax QLD
- ▶ Exempts certain payments such as:
 - ▶ <90 days
 - ▶ <180 days if services related to your business
 - ▶ Services performed by 2 or more people
 - ▶ Supply of goods
 - ▶ Services not ordinarily required by your business

Are you a contractor

- ▶ Not a question limited tax
- ▶ Built upon employment and negligence cases
 - ▶ Employer liability for employee?
 - ▶ Employee payments on termination?
 - ▶ Leave entitlements?
- ▶ Factors ultimately summarized in ATO and OSR guidelines
- ▶ OSR ruling - PTA038
- ▶ Affects other areas of tax including (but not limited to) FBT, SGC, PSI

Are you a contractor?

- ▶ Factors:

- ▶ Control/direction
- ▶ Contract and practical relationship
- ▶ Results based
- ▶ Independent business
- ▶ Power to delegate
- ▶ Risk
- ▶ Provision of tools and equipment

- ▶ Look around:

- ▶ Uber
- ▶ Australia post

Employment agency provisions

- ▶ Ordinary circumstance: B performs services and is engaged to A
- ▶ Way around:
 - ▶ B works for C
 - ▶ C contracts with A and provides B's services
- ▶ Rules introduced to cover these circumstances
- ▶ Common examples include cleaning services or building contractors

Grouping provisions

- ▶ Grounds for grouping:
 - ▶ Grouping of corporations
 - ▶ Use of common employees
 - ▶ Commonly controlled businesses
 - ▶ Tracing of interests in corporations
 - ▶ Smaller groups subsumed into larger groups

Case example of grouping

- ▶ Accounting Practice conducted through Trust A controlled by A
- ▶ Gentlemen's Club conducted through a Unit Trust whereby A had a 50% interest in the business (as a passive investor)
- ▶ Building Contractor style business (i.e. engages various tradespersons to build sites) whereby A lent monies to the business
- ▶ Employment Agency business conducted by a lawyer who conducted his practice through the Accounting Practice
- ▶ All up, around 20 entities grouped using a combination of the above

Contractor provisions

- ▶ Certain payments made to contractors are taxable wages
- ▶ Question is whether the arrangement is a 'relevant contract'
- ▶ 13B Payroll Tax QLD
- ▶ Exempts certain payments such as:
 - ▶ <90 days
 - ▶ <180 days if services related to your business
 - ▶ Services performed by 2 or more people
 - ▶ Supply of goods
 - ▶ Services not ordinarily required by your business

Grouping summary

- ▶ Grouping of corporations - holding companies, subsidiaries, subsidiaries of a holding company holding the shares in the current business
- ▶ Grouping based on use of common employees - where one or more employees perform duties in connection with one or more businesses carried on by their employer and in connection with the employer's obligation:
 - ▶ Family businesses
 - ▶ Professionals conducting from the same premise using shares administrative support staff but note PTA017 exempting where the arrangements are genuine
- ▶ Grouping based on common control - looking at who holds a 50% or greater interest (includes sets of persons):
 - ▶ Note any beneficiary in a discretionary trust has 'deemed control'
 - ▶ Includes sets of persons in control of an entity

What can you do?

- ▶ In a unique position where you can see some of the affairs of clients and they generally see you once a year
- ▶ Consider raising these queries preemptively
- ▶ If their business model relies on 'contractors' - test the application of payroll tax for your client (have they considered it)?
- ▶ If multiple businesses are operated by your client and perhaps direct family - are the grouping provisions applicable?

Thank you

Darius Hii

Chat Legal Pty Ltd

0403 923 374

darius@chatlegal.com.au