



ANDRESEN M^CCARTHY PARTNERS

LEADING THE WAY



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Landmark ATO Ruling For Employee Classifications

The Australian Taxation Office (ATO) has recently provided new guidance that redefines how it identifies employees and underscores the importance of written agreements to avoid PAYG or superannuation audits. This development follows two significant High Court rulings last year (FMMEU v Personnel Contracting and ZG v Jamsek).

This updated guidance from the ATO signifies a departure from the previous "multi-factorial" analysis of parties' conduct when determining worker classification.

The ATO now aligns its approach with the High Court rulings, providing greater certainty in the classification process.

The ATO's ruling and practical compliance guideline highlight the crucial role of written agreements that comprehensively outline how tasks are performed. Courts and tribunals will

now primarily rely on the terms of the written agreement, departing from an emphasis on the conduct or behaviour of the parties unless the written agreement contradicts their actual practices.

Determining worker classification as employees or contractors comes with various tax obligations for employers, including salary withholding under the PAYG system, payment of FBT on benefits, and making superannuation payments.

The ATO's guidance, outlined in TR 2023/4, emphasises that assessing whether a worker is an employee is a factual question based on the parties' relationship, legal rights, and obligations. Legal rights and obligations should be interpreted based on the employment contract, following established contractual interpretation principles.

The ATO's risk assessment framework, detailed in PCG 2023/2, categorises arrangements into very low, low, medium, and high-risk zones.

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Landmark ATO Ruling For Employee Classifications (Cont.)

Criterion	Very Low	Low	Medium	High
1	There is evidence that both parties intended for the worker to be classified in the same way, either as an employee or as an independent contractor	There is evidence that both parties intended for the worker to be classified in the same way, either as an employee or as an independent contractor	There is evidence that both parties intended for the worker to be classified in the same way, either as an employee or as an independent contractor	Any arrangements that do not fall within the other 3 risk zones
2	There is a comprehensive written agreement that governs the entire relationship between the parties	There is a comprehensive written agreement that governs the entire relationship between the parties	Not applicable	Any arrangements that do not fall within the other 3 risk zones
3	There is evidence to show that both parties understood what the worker's classification meant, and what the tax and superannuation consequences of that classification would be	Not applicable	Not applicable	Any arrangements that do not fall within the other 3 risk zones
4	The performance of the arrangement has not significantly deviated from the contractual rights and obligations agreed to by the parties	The performance of the arrangement has not significantly deviated from the contractual rights and obligations agreed to by the parties	The performance of the arrangement has not significantly deviated from the contractual rights and obligations agreed to by the parties	Any arrangements that do not fall within the other 3 risk zones
5	The party relying on this Guideline is meeting the correct tax and superannuation obligations that arise for their intended classification, and reporting appropriately	The party relying on this Guideline is meeting the correct tax and superannuation obligations that arise for their intended classification, and reporting appropriately	The party relying on this Guideline is meeting the correct tax and superannuation obligations that arise for their intended classification, and reporting appropriately	Any arrangements that do not fall within the other 3 risk zones
6	The party relying on this Guideline obtained specific advice confirming the classification was correct	The party relying on this Guideline obtained specific advice confirming the classification was correct	Not applicable	Any arrangements that do not fall within the other 3 risk zones
7	An engaging business relying on this Guideline also obtained specific advice confirming the application of the extended meaning of employee under the SGAA, and communicated this outcome to the worker	Not applicable	Not applicable	Any arrangements that do not fall within the other 3 risk zones



Factors such as the existence of a comprehensive written agreement and the consistency of parties' conduct with the agreement are crucial in determining risk classification. A comprehensive, signed agreement reflecting how work is performed is highlighted as a key mitigating factor against the risk of an ATO audit.

PCG 2023/2 clarifies the ATO's approach to investigations and audits, incorporating an updated risk assessment framework. The ATO may initiate reviews into PAYG or superannuation obligations through proactive case selection or complaints

from workers suspecting underpayment due to misclassification.

Businesses are strongly encouraged to assess their risk against the ATO's framework, ensuring comprehensive written agreements that align with actual practices to mitigate the risk of audits and investigations. Understanding the implications of the ATO's guidance is crucial for businesses aiming to ensure compliance with their employment classifications.

If you are uncertain about your employee classifications, speak with a trusted business adviser.

Our Team Event Recap: The Amazing Race!

What a thrilling day under the sun as we embarked on an exhilarating adventure across the Melbourne city!

🧩 Our teams worked in harmony, deciphering clues scattered around the CBD, in a quest to reach the finish line. It was a whirlwind of fun, fast-paced action, and teamwork that truly made the day unforgettable!

Huge congratulations to our champions, "Accounts Slayable," for claiming the top spot! 🏆 And a massive shoutout to everyone who participated – your enthusiasm and spirit made the event a success!

Special thanks to Urban Quest for organizing such an electrifying experience for us! ⚡ Your creativity and attention to detail added an extra layer of excitement to the race. 🎉 Until the next adventure, let's cherish the memories of today's epic journey together!



INTRODUCING: OUTSIDE IN FINANCE



We would like to take this opportunity to formally introduce our dedicated broking team - Outside In Finance. Outside In Finance have been with AMCP since early 2023 and have already achieved amazing outcomes for our clients with new lending assistance, loan restructuring and interest rate reviews.



The directors Daniel Carrafa and Michael Brown bring over 50 years of combined experience in business, property development and private banking loan advisory. Also in The Outside In Finance team is Edina Subasic, Associate - Lending. Her banking expertise further enhances the clients ongoing relationship.

The team are loan experts in the following:

- Commercial and Business Loans
- Residential Home Lending
- Asset Finance

Your ongoing success is our priority, and we invite you to reach out to Outside In Finance to discuss any of your financial needs.

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We are here to help

Make use of us! This guide is merely a starting point, designed to help you identify areas that might have a significant impact on your personal and business planning.

We are always pleased to discuss matters with you and advise in any way we can.