

# AUSTRALIAN TAX ADVISER

2305 : NOVEMBER 2022

Tony Westhuysen  
Principal, Tax Solutions

## IN THIS ISSUE

<b>SECTION 1 – PROFESSIONAL DEVELOPMENTS .....</b>	<b>1</b>
<b>EMPLOYEE OR CONTRACTOR?.....</b>	<b>1</b>
¶5.1 The Federal Court Decision .....	2
¶5.2 The Full Federal Court decision .....	3
¶5.3 The High Court Decision .....	3
¶5.4 Key considerations.....	6
<b>SECTION 2 – PROFESSIONAL CURRENCY .....</b>	<b>7</b>
<b>BILLS AND LEGISLATION.....</b>	<b>7</b>
¶5.5 Bills under debate .....	7
¶5.6 FBT exemption for child care staff discounts .....	8
¶5.7 GST adjustment note information requirements: ATO Legislative Determination .....	10
¶5.8 GST and deferred farm-out arrangements: ATO Legislative Determination ..	10
¶5.9 Seniors Health Card income threshold: Bill passes without amendment .....	11
¶5.10 Pension changes to assist workforce participation: Bill introduced.....	11
¶5.11 Pensioner work bonus temporary increase .....	11
¶5.12 ACNC regulations remade .....	12
¶5.13 Simplifying FBT record-keeping requirements.....	12
¶5.14 Franked distributions funded by capital raising .....	13
¶5.15 GST: Margin Scheme valuations.....	13
¶5.16 Withholding tax removed for low-income minors.....	14
¶5.17 PBO costings: Stage 3 tax cuts; fuel efficient cars.....	15
¶5.18 120% deduction for digital take-up expenditure .....	16
¶5.19 120% deduction for external training expenditure .....	17
¶5.20 Hearings and examinations that can be held virtually.....	19

### INFORMATION EXCHANGE CORPORATION

L17, 40 Mount Street,  
North Sydney NSW, 2060

E: [admin@ifx.com](mailto:admin@ifx.com)

T: 61 2 9956 7775

W: [www.ifx.com.au](http://www.ifx.com.au)

### ARCHIVE SEARCHING?

Use your username and  
password to log onto  
[www.ifx.com.au](http://www.ifx.com.au) to search our  
archives and retrieve copies.

### NEED TO ASK AN ADVISER?

Go to [www.ifx.com.au](http://www.ifx.com.au)  
to connect.

Please call customer support  
on 1300 360 905 if you have  
any difficulties.

### SUBSCRIBE TO THIS PUBLICATION

[Click here](#)

Can we help?

Call 1300 360 905  
Email [admin@aifx.com.au](mailto:admin@aifx.com.au)

## IN THIS ISSUE

¶5.21	Cryptocurrency not a foreign currency .....	20
¶5.22	Veterans' support legislation .....	20
¶5.23	Electronic Payment System transactions exempt from reporting .....	21
<b>CASES AND DECISIONS .....</b>		<b>22</b>
¶5.24	Part IV A applied to non-resident beneficiaries.....	22
¶5.25	Share buy-back scheme involved a reimbursement agreement.....	24
¶5.26	Court imposes \$7.2m penalty for breaches of best interest obligations.....	27
¶5.27	AMP companies fined for charging fees for no service.....	28
<b>RULINGS AND GUIDELINES .....</b>		<b>29</b>
¶5.28	CGT: ATO discretion to extend two-year period to dispose of deceased's dwelling .....	29
¶5.29	Withholding tax exemption for interest derived by UK or US financial institutions.....	29
¶5.30	Non-profit sporting and games clubs .....	30
¶5.31	Non-commercial loss rules.....	31
¶5.32	GST-free supplies by Residential Colleges .....	32
<b>SECTION 3 – QUESTIONS &amp; ANSWERS.....</b>		<b>32</b>
¶5.33	Deceased estate and UPE to trust beneficiary.....	32
¶5.34	Motor vehicle depreciation .....	33
¶5.35	Realisation of pre-CGT commercial property by a private company .....	34
¶5.36	Director resignation in sole director company.....	35
¶5.37	Residency – change of circumstances .....	36
¶5.38	Balancing adjustments – pool account.....	37
¶5.39	Refinancing of LRBA .....	37
¶5.40	Property taxation – CGT .....	39

### INFORMATION EXCHANGE CORPORATION

L17, 40 Mount Street,  
North Sydney NSW, 2060

E: [admin@ifx.com](mailto:admin@ifx.com)

T: 61 2 9956 7775

W: [www.ifx.com.au](http://www.ifx.com.au)

### ARCHIVE SEARCHING?

Use your username and  
password to log onto  
[www.ifx.com.au](http://www.ifx.com.au) to search our  
archives and retrieve copies.

### NEED TO ASK AN ADVISER?

Go to [www.ifx.com.au](http://www.ifx.com.au)  
to connect.

Please call customer support  
on 1300 360 905 if you have  
any difficulties.

### SUBSCRIBE TO THIS PUBLICATION

[Click here](#)

Can we help?

Call 1300 360 905  
Email [admin@aifx.com.au](mailto:admin@aifx.com.au)

## SECTION 1 – PROFESSIONAL DEVELOPMENTS

### EMPLOYEE OR CONTRACTOR?

One of the more challenging questions that practitioners faced was working out whether an individual was an employee or a contractor. The default position of the ATO has until recently been to treat all individuals as employees unless there were compelling reasons why they ought to be treated as contractors.

The following table was published by the ATO to assist in determining whether an individual was an employee or a contractor:

Employee	Contractor
<a href="#">Ability to subcontract/delegate</a> : the worker can't subcontract/delegate the work – they can't pay someone else to do the work.	<a href="#">Ability to subcontract/delegate</a> : the worker can subcontract/delegate the work – they can pay someone else to do the work.
<a href="#">Basis of payment</a> – the worker is paid either: <ul style="list-style-type: none"> <li>• for the time worked</li> <li>• a price per item or activity</li> <li>• a commission.</li> </ul>	<a href="#">Basis of payment</a> : the worker is paid for a result achieved based on the quote they provided.  A quote can be calculated using hourly rates or price per item to work out the total cost of the work.
<a href="#">Equipment, tools and other assets</a> : <ul style="list-style-type: none"> <li>• your business provides all or most of the equipment, tools and other assets required to complete the work, or</li> <li>• the worker provides all or most of the equipment, tools and other assets required to complete the work, but your business provides them with an allowance or reimburses them for the cost of the equipment, tools and other assets.</li> </ul>	<a href="#">Equipment, tools and other assets</a> : <ul style="list-style-type: none"> <li>• the worker provides all or most of the equipment, tools and other assets required to complete the work</li> <li>• the worker does not receive an allowance or reimbursement for the cost of this equipment, tools and other assets.</li> </ul>
<a href="#">Commercial risks</a> : the worker takes no commercial risks. Your business is legally responsible for the work done by the worker and liable for the cost of rectifying any defect in the work.	<a href="#">Commercial risks</a> : the worker takes commercial risks, with the worker being legally responsible for their work and liable for the cost of rectifying any defect in their work.
<a href="#">Control over the work</a> : your business has the right to direct the way in which the worker does their work.	<a href="#">Control over the work</a> : the worker has freedom in the way the work is done, subject to the specific terms in any contract or agreement.
<a href="#">Independence</a> : the worker is not operating independently of your business. They work within and are considered part of your business.	<a href="#">Independence</a> : the worker is operating their own business independently of your business. The worker performs services as specified in their contract or agreement and is free to accept or refuse additional work.

Readers who routinely address these matters will recognise the similarity between these criteria and the so-called 'results test' conditions referred to in the *Alienation of Personal Services Income* regime outlined in