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2 July 2009

Mr Keith James
The Board of Taxation
c/- The Treasury
Langton Crescent
Canberra ACT 2600
By e-mail - taxboard@treasury.gov.au

Dear Mr James

Post-implementation review into the alienation of personal services income rules

Thank you for your letter of 16 June 2009, addressed to HIA President Ms Jill Lee, regarding the above review by the Board of Taxation. Ms Lee has asked me to reply on her behalf.

The Housing Industry Association Ltd (HIA) is Australia's premier construction industry association, representing over 40,000 industry members throughout Australia. Many of HIA's members are independent contractors, and HIA was heavily involved, in 1999-2001, in the development by the then Federal Government of the rules currently under review. HIA was also involved with the ATO in relation to the subsequent implementation of the provisions, and the provision of industry education.

HIA considers that there is currently no difficulty or dissatisfaction with the Alienation of Personal Services Income provisions of the Income Tax Assessment Act. HIA believes that the rules have worked well and have fully addressed the issues (originally raised by the Ralph Report in 1999) about which the Government was concerned. So far as HIA is aware, there is no evidence to suggest that the provisions are not effective, have led to unforeseen outcomes, or require improvement.

It will be recalled that at the time of the Ralph Report, there was widespread criticism from trade unions and other groups alleging that contractors were unfairly able to avoid paying their proper level of income tax, and that 'sham' contracting was rife in many service industries, driven primarily by tax considerations.

All that has now changed. Contractors in the construction industry have now fully assimilated the Personal Services Business tests into their business structures, and rely on that status as a strong indicator of their legal status for other purposes e.g. workplace relations and payroll tax. The tests, although complex, are now well understood - HIA now receives a very low level of inquiry from its members about APSI and it appears that compliance costs to contractors are minimal.

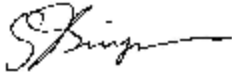
So far as HIA is aware, there remains little or no dissatisfaction in the union movement or wider community that independent contractors are avoiding tax or that workers are falsely claiming contractor status for tax minimisation reasons.

Removal of the tax incentives, together with the *Independent Contractors Act 2006*, has meant that persons now working as contractors are overwhelmingly properly classified as such at common law, and are not unfairly advantaged vis-a-vis employed workers. Thus, the legislation was very successful in achieving the announced policy intent. Remarkably for a piece of tax legislation, there appear to have been no unintended consequences.

Indeed, HIA is so confident of the appropriateness and robustness of the Act's tests that it put them forward to the then Federal Government for inclusion in the *Independent Contractors Act* as a prima facie test of contractor status. Regrettably, HIA's proposal was not adopted by the then Minister.

HIA is very willing to answer any particular questions the Board may have, and would be happy for its view to be posted on the Board's website.

Yours sincerely,

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

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