

Master Builders Australia

Submission to the Board of Taxation's Review of Tax Impediments Facing Small Business

May 2014



© Master Builders Australia Limited 2014.

Master Builders Australia Limited

ABN 68 137 130 182

Level 1, 16 Bentham Street (PO Box 7170), YARRALUMLA ACT 2600

T: +61 2 6202 8888, F: +61 2 6202 8877, enquiries@masterbuilders.com.au, www.masterbuilders.com.au

This submission is copyright and all rights are reserved. No part of it may be reproduced, stored, transmitted or otherwise distributed, in any form or by any means without the prior written permission of the copyright holder. Images on the cover are winners of 2011 Master Builders National Excellence in Building and Construction Awards.

CONTENTS

1	Overview.....	2
2	Introduction.....	2
3	Background.....	3
4	General Comments by Master Builders Australia.....	3
5	Tax Compliance and the Building & Construction Industry.....	4
6	Specific Concerns of Builders Regarding Tax Compliance.....	5

1 Overview

- 1.1 In the area of tax compliance, Master Builders Australia continues its call for ongoing efforts to simplify business compliance. In this regard, we welcome the Board of Taxation's review into tax impediments facing small business.
- 1.2 Master Builders is particularly concerned that complexity and its resulting compliance burden falls disproportionately on small business which cannot take advantage of economies of scale. This unfairly disadvantages small businesses relative to large.
- 1.3 In relation to tax compliance issues, there are currently two serious areas of concern to Master Builders' members. These are:
- Reporting requirements for contractors in the building and construction industry, and
 - Employee and contractor definitions.

2 Introduction

- 2.1 Master Builders Australia is the peak national association for the building and construction industry in Australia. Its primary role is to champion the interests of the building and construction industry, representing residential and commercial building, and engineering construction.
- 2.2 Master Builders Australia has more than 32,000 member-companies with representation in every state and territory from all parts of the building and construction industry. Our members are large national, international, residential and commercial builders and civil contractors through to smaller local subcontracting firms, as well as suppliers and professional advisers.
- 2.3 The building and construction sector accounts for close to 8 per cent of gross domestic product and 9 per cent of employment in Australia. It makes an essential contribution to the generation of wealth and welfare of the community. At the same time, the wellbeing of the building and construction industry is closely linked to the prosperity of the domestic economy.

- 2.4 The cumulative building and construction task over the next decade will require work done to the value of \$2.8 trillion and for the number of people employed in the industry to rise to 1.3 million.
- 2.5 Over 95 per cent of the 340,000 building and construction industry businesses are small businesses.

3 Background

- 3.1 The Board of Taxation is conducting a review into tax impediments facing small business. The Board has invited Master Builders Australia to make a short submission outlining the nature of significant tax impediments faced by a broad cross section of small business operating in the building and construction industry.
- 3.2 Given the fast-track nature and challenging deadline associated with this review, the Board has indicated that organisations may like to provide a truncated response addressing, for example, the top two or three issues they believe to be of most concern in this area.

4 General Comments by Master Builders Australia

- 4.1 The building and construction is one of the most heavily regulated industries. The red tape burden falls disproportionately on small business. Tax is probably the most concerning area for small business in terms of burden and impediments. Small businesses, in particular:
- Tend not to be incorporated as companies; few operate trusts or incorporated bodies; tend to be personally liable for business decisions, without in-house corporate or legal expertise
 - Rely more on debt financing and less on equity, with loans being frequently secured against personal assets, often the family home
 - Run by owner/managers who have invested substantial sums in their businesses; time spent on day-to-day operations means little time to strategically manage their businesses
 - Operate in localised markets and from a single location making them vulnerable to changing market conditions.

- 4.2 Between a quarter and one third of all small businesses in the Australian economy are to be found in the building and construction industry. In the building and construction industry over ninety-five per cent of all businesses employ fewer than five people and less than one per cent employ 20 or more.
- 4.3 Master Builders Australia's policy strongly supports the Government's focus on the process of removing regulation that is unnecessarily burdensome, complex and redundant or duplicates regulation in other jurisdictions. Reviews in this area should have the express aim of reducing the compliance burden and removing any unnecessary complexity.
- 4.4 While Master Builders Australia recognises that, in general, small business will be best served by policies that promote the interests of the business community as a whole, the inherent differences associated with small businesses must also be taken into account.
- 4.5 Master Builders Australia therefore advocates specific small business policies that:
- Reduce the complexity of the tax system for small business;
 - Reduce the compliance costs of regulation;
 - Increase the ability to access debt and equity finance; and
 - Facilitate small business participation in government procurement.

5 Tax Compliance and the Building & Construction Industry

- 5.1 Master Builders Australia has called on the federal Government to reform the tax system to create a more business-friendly environment to promote investor confidence. This can be done by ensuring the taxation system rewards entrepreneurship and reduces compliance costs for business particularly small business.
- 5.2 In the area of tax simplification, Master Builders Australia continues its call for ongoing efforts to simplify business tax compliance. The inefficient collection and administration of taxes distorts economic decision making. Raising revenue to fund government outlays must be done as efficiently as possible

and the increasing complexity and volume of Australia's tax law represents an ongoing burden for Australian business.

- 5.3 Resources devoted to compliance in an unnecessarily complex tax system could be used more productively. Master Builders Australia is particularly concerned that complexity and its resulting compliance burden falls disproportionately on small business which cannot take advantage of economies of scale. This unfairly disadvantages small businesses relative to large.

6 Specific Concerns of Builders Regarding Tax Compliance

- 6.1 In relation to tax compliance issues, there are currently two areas of serious concern for Master Builders Australia's members. These are:

- Reporting requirements for contractors in the building and construction industry, and
- Employee and contractor definitions.

- 6.2 In relation to the first issue, Master Builders Australia has called on the Abbott Government to repeal the previous Government's reporting requirements for contractors in the building and construction industry.

- 6.3 Under these reporting arrangements contractors are required to make an annual report to the Australian Taxation Office about payments to other contractors in the building and construction industry.

- 6.4 Master Builders Australia has identified a number of shortcomings with the proposal, including:

- Legitimate operators in the industry are subjected to an increased administrative burden that is adding to the cost of doing business, and
- The reporting requirements drive those who already abuse the system underground, punishing legitimate operators by increasing their compliance costs.

- 6.5 Member feedback indicates that the ATO's current tools of benchmarking and data matching could be used to the same effect rather than imposing a cost

and administrative burden on the industry, particularly the small business component.

- 6.6 In relation to the second issue, Master Builders Australia has received member feedback and concern about the multiple definitions of employee and contractor that are used by various regulators at both the federal and State levels.
- 6.7 Through anecdotal evidence, Master Builders Australia has received comments from builders saying it is frustrating and at times legally fraught exercise that adds unnecessarily to their tax-related compliance burden.
- 6.8 Independent contracting is the life blood of the building and construction industry. This method of working brings substantial benefits to all parties. In a time of skills shortages, it permits skilled tradespeople to significantly increase their earnings since their income is directly linked to their efficiency arising from the actual time they work. In turn, other industry participants gain from this method of engagement because results-based contracts that characterise subcontracting are generally more efficient than time-costed labour; subcontracting has therefore become a prevalent feature of the industry.
- 6.9 Where an individual is a contractor there are many instances where that contractor risks being treated as an employee. Hence, having regard to the common law test that distinguishes an employee from a contractor and other statutorily recognised criteria such as a personal service business determination, an independent contractor could choose to be registered with a dedicated Australian Government agency, recommended to be the Australian Taxation Office.
- 6.10 The application for registration could be accompanied by a certificate from a legal practitioner or other suitably qualified professional or even an industry association, to the effect that, having regard to the statutory criteria, the contractor should be registered and for which particular project or job inclusive of a limitation related to the time of the particular project.
- 6.11 This factor acknowledges the dynamism of the relevant relationships and does not lock the individual or entity into a static framework. The registration would be for fixed periods but renewable where circumstances changed say

for example if the contractor was an individual who also worked occasionally as an employee.

- 6.12 Master Builders has argued that registration of this type would increase certainty. It need not be a costly measure. The process would require minimal Australian Government supervision, probably limited to some random audits, for example, so that it took on the elements of a scheme of negative licensing where registration was by choice and without scrutiny of individual registrations but harsh consequences applied where the registrant did not obtain appropriate advice, for example, before registration. It would operate to take into account the dynamic nature of the contractor status and would permit registration as a contractor for a limited period or only in respect of particular projects.
- 6.13 Obviously, the status of a contractor is a product of the nature of the relationship that is formed. Hence, a building industry participant may be an employee for a specific period but then enter into a different relationship that provides them with the status of an independent contractor. Therefore the system envisaged by Master Builders is based on regulation of independent contractors for the purpose of specific projects which link registration with a Commonwealth agency as a voluntary matter. It could be used as a means to have a National Code and Guidelines pre-audit status conferred so that the processes under the Code and Guidelines would act as an additional check on the veracity of the registration. This would reduce the consequences of the register being used as a means to stop people choosing to become contractors, a barrier to entry.
- 6.14 Master Builders Australia intends to ask some supplementary questions on these two current issues of serious concern discussed above, in its next quarterly survey of members. This should enable a perspective of how significant the two issues are to the small businesses operating in the building and construction industry.
- 6.15 Master Builders Australia would be happy to share this information with the Board as soon it becomes available.
