

# Staff swapping to lucrative contractor roles ‘blind to fallout’

## **BUSINESS**

*CPA Australia says legal changes leave members with tricky problems and the ATO needs to reinstate key online resources.*

By [Josh Needs](#) • 06 March 2023 • 5 minute read

Staff are switching from employees to contractors in the wake of an ATO draft ruling and it has left tax agents and accountants in limbo regarding worker obligations, CPA Australia says.

It said in the aftermath of two landmark court cases, ATO TR 2022/D3 had incentivised workers to switch from employees to more lucrative independent contracts and claim the tax benefits.

But agents scrutinising these arrangements were often concerned about the legitimacy of the move and found clients reluctant to be quizzed, CPA said, and called for the ATO to reinstate key online resources.

“Tax agents seeking to confirm the particulars of the performance of the arrangement against the contract terms are rebuffed by taxpayers who are confident that the contract itself and their agreement thereto is sufficient to demonstrate tax compliance,” CPA Australia said in its submission on the ATO draft.

“Taxpayers who achieve lower effective tax rates through such contracts are unlikely to disclose the arrangements as a sham, creating uncertainty for tax agents as to how to take reasonable care in checking whether or not they are actually working in the business of the engaging entity.”

“Templated agreements with standardised terms are being utilised and, despite client attestations, agents remain concerned as to whether the individual properly and fully understands and accepts the tax and superannuation consequences.”

CPA Australia cited one member who specialised in tax advice to the health industry who was concerned how pharmacists were reacting to the high court decisions and ATO ruling.

“The tax agent is finding clients are now presenting contracts that classify the working relationship as one of an independent contractor when, prior to the high court decision, they were (or were found to be) an employee, despite the wording of the contract,” it said.

“As a result, these individuals are effectively earning up to 30 per cent more than when they were engaged as an employee. As independent contractors, these workers are also claiming additional expenses as tax deductions which they were unable to do when previously classified as employees.”

Last year's high court decisions *Construction, Forestry, Maritime, Mining and Energy Union v Personnel Contracting Pty Ltd* [2022] HCA 1 and *ZG Operations Australia Pty Ltd v Jamsek* [2022] HCA 2, meant it no longer mattered how a contract was performed, the keys to the nature of an employment arrangement were the written legal rights and obligations.

CPA Australia recommended increased guidance and education for tax agents and accountants regarding the revised rulings, to prevent agents from applying the law and precedents incorrectly.

To assist its members in dealing with clients looking to shift from employees to independent contractors, CPA Australia has called for the ATO to reinstate its employee or contractor decision tool.

It said the tool was useful in demonstrating to clients that their self-assessed independent contractor classification could be incorrect.

“We recommend that the ATO release an updated decision tool as soon as possible to reflect the risk framework set out in the draft PCG,” it said.

“This will enable agents and taxpayers to more confidently self-assess where their arrangement falls within the four risk zones and facilitate agent-client discussions about working arrangements.”