

SENATE STANDING COMMITTEE ON ECONOMICS QUESTION
(Supplementary Budget Estimates 20 October – 21 October)

Question: SBT 223**Topic: Cost of tax evasion through sham contracting**

Senator Cameron asked:

Senator CAMERON—Do you have any idea how much revenue is lost through sham contracting?

Mr D'Ascenzo—When people talk about sham contracting, it is sometimes arrangements which are legal but which force onto the employee certain legal requirements that make them contractors under common law. Sometimes they work through companies that take them out of this dichotomy of employee or employer. So it is not that easy to work out which part of that industry practice—

Senator CAMERON—So is it a legislative impediment? Have you actually been able to ensure that people pay the proper tax?

Mr D'Ascenzo—I think it is a question of having to have a look at the individual arrangements of a range of employers and a range of employees to see whether or not they meet the legal requirements.

Senator CAMERON—But that is not what I asked you. I asked you if you see any legislative impediment to being able to deal effectively with ensuring that people are properly classified and pay their proper tax.

Mr D'Ascenzo—I think the answer I gave you is quite relevant, because it is a question of finding the arrangement and then examining it in terms of whether it meets the common or legislative processes. That is a very resource intensive exercise.

Senator CAMERON—I do not intend doing a Senator Brandis or a Senator Abetz on you. I ask if you could take that on notice and see whether you consider there is any further information you can advise me of in relation to this question. It is an important question for me and I will be pursuing it further. I still am not sure. You cannot tell me what the cost to the economy is of tax evasion through sham contracting?

Answer:

The costs to the community of sham contracting occur when businesses incorrectly treat workers as contractors and do not withhold payments to them under pay as you go withholding or make superannuation guarantee contributions on their behalf. While some sham contractors comply with their tax obligations as a business, many of these workers (whether sham or genuine) do not have the knowledge and understanding to comply with the business tax system.

The nature of sham contracting arrangements makes it very difficult to estimate the numbers involved at any one point in time and as a consequence it is difficult to accurately estimate the revenue at risk. Each contract would need to be examined on an individual basis. There is evidence that recent economic conditions have increased pressures on some businesses to contain their costs as employers, leading to an increase in the practice of sham contracting.

Businesses that engage in sham contracting arrangements typically require workers to obtain an Australian business number. In April 2009 more stringent tests around Australian business number registrations were introduced, since that time, the ATO has refused over 80,000 applications lodged by individuals requesting Australian business number registration. The refusals have primarily been due to a failure of the applicant to satisfy the requirement of carrying on an enterprise and are a further indicator of the extent of the sham contracting problem.

Under the Level Playing Field program (a 2009 strategic Budget initiative), the ATO has collected over 23,000 reports of income paid to contractors (both sham and genuine) by 560 businesses. The ATO is currently comparing the details in these reports with ATO data to gauge the level of compliance in the contractor population.