

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

---

**Question: SBT 80**

**Topic: Personal Service Income**

Senator Bushby asked:

In relation to the Board of Taxation's review of the Personal Services Income rules, how was review advertised, and what role did ATO and the Treasury play in the review?

The Government has used some very strong language following the Board's findings. Both Minister Sherry and Minister Shorten have used the phrase "sham contractors" – do you feel that there is a significant amount of sham contracting going on? How much? What is the evidence?

What analysis was undertaken during the consultation process in regards to compliance?

What was the sample size of independent contractors' tax returns used?

What percentage of non-compliance was used to constitute statistical significance?

**Answer:**

This response is limited to the ATO and does not include information relating to the broader Treasury portfolio.

The ATO presented information to the Board of Tax Review relating to:

- the operation of the personal services income rules
- the compliance risks
- compliance activity.

The ATO is concerned with non-compliance with tax and superannuation obligations. Sham contracting can be a vehicle for non-compliance with an employer's obligations under the PAYG Withholding and Superannuation Guarantee systems. It also places the worker in the situation of having to manage their own taxation affairs as a business in their own right – they often do not have the skills, knowledge or motivation to comply with the requirements of the business taxation system.

The nature of sham contracting arrangements makes it very difficult to estimate the number of sham contractors at any one point in time. However, 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.

The government provided additional funding in the 2009 Budget to focus on the tax and superannuation compliance of employers, including sham contracting arrangements.

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

---

The strategy includes audits of employers and businesses engaging contractors. In addition to audit activity, the ATO captures details of income paid to contractors and checks whether the income has been properly reported in taxation returns.

The audit cases are selected based on indicators of risk, therefore the results will not necessarily be typical of any industry or segment. However, out of 294 field audits carried out this year, 114 businesses were found to be incorrectly treating workers as contractors when they were actually employees for taxation and superannuation purposes. As the entities were selected on the basis of risk, the percentage of those audited who were found to be incorrectly treating workers as contractors does not indicate the level of non-compliance and does not allow for this type of statistical analysis.

Businesses that engage in sham contracting arrangements typically require workers to obtain an Australian business number. Since April 2009, the ATO has refused over 80,000 applications lodged by individuals applying for an Australian business number. The refusals have primarily been due to a failure of the applicant to satisfy the requirement of carrying on an enterprise.