

Paper No. 20101201
Available on Website: www.roymorgan.com
On December 10, 2010

Roy Morgan Research today won the right to appeal to the High Court

Today at a hearing before the High Court of Australia, Roy Morgan Research was granted special leave to appeal against the Federal Court decision earlier this year that Roy Morgan had a **Superannuation Guarantee Charge (SGC) obligation** in relation to payments to certain individuals who performed work for the company.

One of the arguments put forward in the Federal Court case, was that the Government had no power to levy the SGC as the exaction was not a tax and therefore was invalid on constitutional grounds. Roy Morgan sought leave to appeal to the High Court on this issue, and in today's hearing this was granted. We expect our appeal will be heading to the High Court in Canberra some time in the middle of next year.

This case should attract a lot of attention from many corners of the business and political spheres of Australian Society due to the fact that the SGC is used to compel employers to make superannuation contribution on behalf of employees. If the SGC is deemed invalid, then the payment of superannuation could revert to being a private matter between the employer and the employee and subject to negotiation like every other aspect of an employer/employee relationship.

The following article by Robert Gottliebse in Business Spectator covers the issue:

A super gift for contracting

Robert Gottliebse – Published 11:39AM, 10 Dec 2010

Every transport and communications company can breathe a little easier over Christmas. They were facing major losses as a result of a Federal Court tax decision. But today the High Court has allowed an appeal. The Federal Court previously upheld the right of the Australian Tax Office to pursue those who hire contractors and those contractors who do not contribute compulsory amounts in superannuation.

The major transport and communications companies are big users of contractors and no doubt many of those independent contractors do not pay superannuation. If the Federal Court's decision is unchallenged, the transport companies and others using independent contractors will have to pay extra money to cover the superannuation shortfall. But householders who hire a plumber or electrician would be just as liable if the people doing their work do not pay superannuation.

What a contractor does with the money they are paid should have no implications for the person accepting the tender and paying the bill. Many believe that the tax thrust in this area is a behind-the-scenes attempt to destroy contracting and make everyone employees. This would cause chaos across wide areas of commerce.

It would be a backdoor attempt to overthrow the assurances of Assistant Treasurer Bill Shorten that the existing independent contracting tests will remain (*The real sham in Shorten's super plan*, November 19). It is possible that while the High Court appeal is being heard, common sense will prevail in Canberra and the necessary act will be changed but the government may wait for the appeal to be decided.

The group which appealed the case is Roy Morgan Research, a major user of contractors.

<http://www.businessspectator.com.au>

For further details contact:

Gary Morgan: Executive Chairman, Roy Morgan Research
Office +61 3 9224 5213 Facsimile (0)3 9629 1250 Mobile +61 411 129 094
E-mail: Gary.Morgan@roymorgan.com

Level 1, 401 Collins Street,
Melbourne, VIC, 3000

Website: www.roymorgan.com

Offices in: Melbourne, Sydney, Brisbane, Adelaide, Perth, London, Auckland, USA and Indonesia