

Contractor vs. Employee

Businesses that engage workers as an “independent contractor” when they are really an “employee” can face serious consequences.

A recent Board of Taxation review found that many workers were incorrectly claiming to be business entities to gain a tax advantage. There are 1 million contractors in Australia, and a Tax Office audit last year of 67 contractors found 84 per cent breached tax rules

The distinction between who is a contractor and who is an employee can be a grey area at times, however it is important that the right distinction is made as different legal and tax obligations apply.

Even if someone quotes an ABN and provides a tax invoice with GST charged you may still have an obligation to meet award obligations, deduct PAYG tax, pay payroll tax, pay 9% super and/or declare their payment under your Work cover policy.

The following information provides an outline to help you determine whether your workers are in fact contractors or employees.

This is only a guide and we recommend clients with concerns about this issue contact us to discuss your particular circumstances.

Employees

Are engaged under a contract of service, which is characterised by the employer’s right to command and control the work of the employee.



Independent Contractors

Are engaged under a contract for service. However, how they achieve that result is under their own control. Payment is usually based on the completion of the task.

If the answer is YES to all the following, then it is likely the person is an employee.

- Is the worker paid a wage or salary?
- Is the work performed at the employers’ place of business?
- Does the worker work regular hours set by the employer?
- Does the employer have the right to direct how the work is carried out and by whom?
- Is the worker restricted in his/her ability to sub-contract part or all of the work?

- Is the majority of the plant and equipment supplied by the employer?
- Is the person engaged for a time-period rather than to produce a particular result?
- Does the employer deduct PAYE tax, superannuation contributions or pay workers compensation insurance?

If the answer is YES to all the following, then the person MAY be a contractor. However, no single criterion is likely to be conclusive.

- Can the person sub-contract any or part of the work without consultation?
- Does the person employ others to complete the work?
- Can the person decide how the work will be undertaken and by whom?
- Does the person own and maintain equipment required to complete the task?
- Does the person have an opportunity to make a profit or a loss on the job?
- Is the person paid on completion of the job and provision of an invoice?

- Is the person required to rectify any faults with the performance of the job?
- Does the person carry out the work under business name, partnership or company structure?

Your Action Plan

There is a contractor/employee decision tool on the ATO website we would highly recommend you use for each person when making the assessment of whether they are a contractor or an employee:

<http://www.ato.gov.au/Calculators-and-tools/Employee-or-contractor/>

Contact Prosperity Accountants team today on +61 8 9443 5199 for assistance with this Action Plan!

The information contained in this Business Guide is not exhaustive and is based on conditions prevailing at the time of publication. Users are advised to consult professionals before taking any formal action. While all reasonable care has been taken in the preparation of the publication, we do not accept any responsibility for any errors it may contain, whether caused by negligence or otherwise, or for any loss, however, caused, or sustained by any person that relies on it.

Note: This information is of a general nature only and is not intended to be relied upon, nor to be a substitute for, specific professional advice. Also as changes in legislation may occur quickly we recommend that our formal advice be sought before acting in any of the above areas.

Address: 312 Oxford Street, LEEDERVILLE, WA 6007
 Tel :+ 61 8 9443 5199 | Fax: + 61 8 9443 5299
 Postal: PO Box 1, Mt. Hawthorn WA 6915
 enquiries@prosperityaccountants.com.au
www.prosperityaccountants.com.au

