

Checklist of factors – Employee v independent contractor

The following table provides a checklist that has been adapted from TR 2005/16, which looks at when a taxpayer is an employee under the PAYG withholding measures.

The table is merely a summary of the factors the courts have regarded as key indicators when considering whether a contract could be one of service(employer/employee relationship), or one for services (independent contractor/principal relationship).

Features of the relationship between payer and payee	Indicators of employer/employee relationship (contract of service)	Indicators of independent contractor/principal relationship (contract for services)
Lawful authority to command	<p>Under a contract of service, the payer exercises control over the manner in which the work is performed by the payee.</p> <p>In addition, tasks are performed at the request of the payer, and the payee is said to be working in the business of the payer.</p>	<p>An independent contractor agrees to produce a given result, and would generally maintain a high level of discretion as to how the work is to be performed in order to achieve that result.</p> <p>That is, the contractor works on his/her own account in order to achieve the results in terms of the contract.</p> <p>The contract can still be one for services, notwithstanding that it specifies in detail how the contracted services are to be performed and/or what materials are to be used.</p>
How is the work performed?	<p>Tasks are performed at the request of the employer. The worker is said to be working in the business of the payer.</p>	<p>An independent contractor enters into a contract for a specific task or series of tasks. The contractor maintains a high level of discretion and flexibility as to how the work is to be performed. However, the contract may contain precise terms as to materials used and methods of performance and still be one for services.</p>
Risk	<p>An employee bears little or no risk.</p> <p>It is generally the employer that:</p> <ul style="list-style-type: none"> - bears all the commercial risk; and - is responsible for any loss that arises due to poor workmanship or negligence of the employee. 	<p>An independent contractor is working on his/her own account in order to generate a profit, he/she is exposed to the risks associated with a particular job, such as:</p> <ul style="list-style-type: none"> - losses attributable to poor workmanship; and - any injury sustained. <p>Generally, an independent contractor would be taking out his/her own insurance policy to cover such risks.</p>

Features of the relationship between payer and payee	Indicators of employer/employee relationship (contract of service)	Indicators of independent contractor/principal relationship (contract for services)
Place of performance	An employee will generally perform the tasks on the payer's premises using the payer's assets and equipment.	An independent contractor, on the other hand, may have his/her own base of operations, and generally provides all assets and equipment.
Hours of work	An employee generally works a standard or set hours.	An independent contractor generally sets own work hours.
Leave entitlements	The contract generally provides for annual leave, long service leave, sick leave and other benefits or allowances.	Generally, an independent contract does not contain leave provisions.
Payment	An employee is generally paid an hourly rate, piece rates or award rates.	Payment is usually based upon performance of the contract (eg. on the basis of successful completion of a particular task or series of tasks).
Expenses	An employee is generally provided with an allowance or reimbursed for expenses incurred in the course of employment.	Generally, an independent contractor incurs his/her own costs in relation to performing services.
Appointment	An employee is generally recruited, directly or indirectly (eg. via an employment agency) through an advertisement by the employer.	An independent contractor is likely to advertise his/her services to the public at large.
Termination	Subject to State or Federal legislation, an employer reserves the right to dismiss an employee at any time.	An independent contractor is contracted to complete a set task. The payer may only terminate the contract without penalty where the worker has not fulfilled the conditions of the contract. The contract usually contains terms dealing with defaults made by either party.
Delegation	<p>Under a contract of service, it is the employee that is personally engaged to work in the business of the employer.</p> <p>Therefore, an employee has no right to delegate his own tasks to another person, although there may be power to delegate some duties to other employees.</p>	Under a contract for services, as the emphasis is on the achievement of a given result, the contractor may delegate work to his/her own employees, or to another sub-contractor.