

## Checklist – Employee or Contractor\*

**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 worker hired as apprentice, trainee, trades assistant or labourer?
- 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 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 a business name, partnership or company structure?

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/>

\*Please refer to TR 2000/14 for more detailed analysis of the difference between the two

Please Note: Many of the comments in this publication are general in nature and anyone intending to apply the information to practical circumstances should seek professional advice to independently verify their interpretation and the information's applicability to their particular circumstances.