

Employee vs Subcontractor

It is important for business owners to understand the terms of employee and contractor and who is classified as what for income tax purposes. This is dependent on the terms and conditions of the work to be performed. Please find below information to assist you in determining the status of workers to ensure your business is correctly fulfilling its income tax requirements and not subjected to penalties or prosecution.

The relationship between an employer and employee is a contractual one, referred to as a contract of service. Such a relationship is typically contrasted with the principal/independent contractor relationship that is a contract for services. An independent contractor typically contracts to achieve a result whereas an employee contracts to provide their labour.

Employee

A worker is more likely to be considered an employee if the worker:

- Is paid for the time they work
- Receives paid leave such as sick leave, annual leave or long service leave
- Does not have to provide equipment required to perform their work
- Works hours set by an agreement or award
- Does not take any risks and therefore cannot make a profit or loss from the work they provided.

Independent Contractor

An independent contractor is defined as an entity that agrees to another party to provide a desired result for an agreed price. An independent contractor is:

- Paid for agreed performance
- Required to provide all the equipment and materials needed for the job
- An entity that can freely delegate work to other entities (such as individuals, partnerships, trusts or companies)
- Free to accept or refuse work
- In a position to take on commercial risks and can make a profit or loss on work provided.

Please Note!

If the worker does hold an ABN this does not automatically mean the worker is a contractor, you still need to consider your nature of agreement with the worker.

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Superannuation Guarantee

Super guarantee is a law that states you must pay super contributions in addition to salary and wages into a complying superannuation fund for your employees.

To determine whether a worker is classified as an employee or subcontractor for superannuation purposes, the ATO under the Superannuation Guarantee Ruling SGR 93/1 states that a contract is a contract for a person's labour if the work must be completed by that particular person. If the contract freely allows that person to have work performed by other people, then the contract is not a contract for labour and the taxpayer in this case is considered an independent contractor and not an employee. Therefore there is no obligation under the SGAA for the 'principal' to provide superannuation for the taxpayer deemed an independent contractor.

However, if the subcontractor holds an ABN and is not considered an independent contractor and is subcontracted for labour only, then the principal is obligated to provide superannuation support for the taxpayer. If a person works under a contract for principally their labour then that person is considered an employee and the employer therefore has to provide superannuation payments for that employee.

Which employees need to have super paid?

Generally, you have to pay super for your employees if they:

- Are between 18 and 69 years of age
- Are paid \$450 (before tax) or more in a calendar month, and
- Work full-time, part-time or on a casual basis working 30 hours or more a week.

Payroll Tax

As of July 1 2008 the Queensland made changes to their payroll tax legislation to bring itself in line with NSW and VIC. We must be careful with this new legislation as one of the main changes introduced into the new legislation is the type of contract payments that need to be included in taxable wages. Any payments you make to a contractor after July 2008 under a relevant contractor are taxable. All amounts principals pay to their employees are taxable. Pay-roll tax is chargeable when the annual wages of an employer, or those of a [group](#) of employers, exceed the current exemption threshold of \$1,000,000 in QLD or \$623,000 in NSW.

The current pay-roll tax rate is 4.75% in QLD or 5.75% in NSW.

PAYG Withholding

If a taxpayer is deemed to be an employee then the employer is obligated to withhold an amount of salary, wage, commission or allowances paid to the employee. The principal determines the amount to withhold from the employees pay bases on the tax tables published by the ATO.

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If the worker is considered and independent contractor then the payer is required to withhold amounts from payment to them, but only if the contractor meets the following requirements.

The contractor has entered into a voluntary agreement with the principal to have amounts withheld from their pay, or, the contractor provides work for a client of the payer under a hired labour arrangement or the contractor has not quoted their ABN to the payer.

GST

If you are an employee then GST is not applicable, but if you are a subcontractor and your turnover exceeds \$75,000.00 then the GST requirements apply. Subcontractors must abide by the provisions of the GST legislation for the supply of goods and services. Businesses that are not registered for GST will have no allowance to claim any of the GST paid in the conduction of business activities. GST collected to the Australian Taxation Office (ATO) and GST paid is claimed back through the Business Activity Statements (BAS).

Workers Compensation Insurance

Workers compensation provides protection to workers and their employers in the event of a work related injury or disease.

It is compulsory for every employer of workers to have a workers' compensation policy to cover any liability for the cost of compensation to injured workers in the event of injuries being sustained during the course of employment.

Where a principal contractor has a similar level of control over a subcontractor as that over a direct employee, the relationship consequently carries a duty of care to the subcontractor and a potential workers compensation liability.

If you have any questions or require any further information please feel free to contact your Client Manager and they will be happy to assist you.

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