

## Employee, Contractor or Other Payment Options?

### **Employee or Contractor**

People can be engaged to work for you as either an Employee or as an independent Contractor. Before engaging someone to work for you it is important to be clear about the difference so that you can choose the most appropriate method of engagement for your particular situation. There are different consequences attached to each relationship, particularly from the payer's perspective. The obligation to make Pay as You Go (PAYG) deductions is one consequence of having an employee as opposed to engaging an independent Contractor. Other consequences may involve workers' compensation, award wage rates and conditions and superannuation.

In both situations there is a contract involved. The relationship between an **employer** and **employee** is a contractual one. It is often referred to as a **contract of service** usually based on performing duties described in a position description.

The relationship between a **contractee** (the person that enters into an agreement with a contractor) and an independent **contractor** is referred to as a **contract for services** that typically describes the outcomes expected from the work of the contractor.

The circumstances surrounding the formation of the contract may assist in determining the true character of the contract. For example, if a contract comes into existence because the contractor advertises his or her services to the public in the ordinary course of carrying on a business or as a result of a successful tender application, the existence of a contractor relationship is inferred. Conversely, if the contract is formed in response to a job vacancy advertised or through the services of a placement agency, the existence of an employer / employee relationship is inferred.

In determining whether a person is an employee the degree of control that can be exercised over the person is another important consideration for you. If you want the right to direct how, when, where and who is to perform the work, you are more likely to want to engage an employee. Another key factor is whether the person is being paid for the time they work, or being paid for a result. A person being paid by the hour is more likely to be an employee. A person paid for a result is more likely to be an independent contractor (even though the payment still may be determined as an hourly rate).

Deeming a person an 'independent contractor' in a contract must be considered with all other terms of the contract. The totality of the relationship between the parties must be



considered to determine whether, on balance, the worker is an employee or independent contractor.

See [Employee Contractor Indicators](#) for key indicators of whether a relationship is that of an employee or independent contractor. For more information see the Australian Tax Office [Employee/contractor decision tool](#).

### **Other options to purchase supports and services**

Self-direction allows the flexibility of engaging specialised people or people from the general community to perform certain tasks for you or to meet a particular need.

### **Contracting Generic Services**

Generic services often can be engaged as an alternative to employing workers or engaging contractors. Examples include engaging a Personal Trainer for the service they provide as an alternative to using a support worker to accompany someone to a gym. A House Cleaner may be engaged as an alternative to employing a support worker for this task where this is more cost effective. A Book Keeper may be engaged to assist with the management of your personal budget. Generic services usually operate under some business structure and will be able to provide a tax invoice for their services. A tax invoice is also required for any equipment purchases.

### **Payment by Statement by a Supplier**

Under tax law, a supplier must quote their Australian Business Number (ABN) by the time the payment is made to prevent 46.5% of a payment being withheld. There are several exceptions to this law. The Australian Taxation Office (ATO) has developed a form, Statement by a Supplier, which can be used to identify the supply and supplier and justify the reason for not withholding when one of the exceptions applies.

The ATO advises on its website that if it conducts a review and finds that the statement as incorrect, you will not be penalised if they believe it was reasonable for you to rely on the supplier's signed statement.

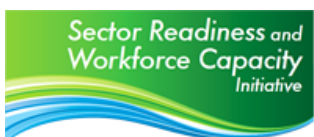
Persons engaged must complete an ATO [Statement by a Supplier form](#). This form (NAT3346) is also available at [www.ato.gov.au](http://www.ato.gov.au) The payer must keep this form for 5 years. For more information refer to the [Statement by Supplier Reference Guide](#).

### **Goods and Services Tax (GST)**

The payer will bear the cost of GST. Therefore, if purchasing support through another service or agency, the payer may be charged the full cost of the GST. The input costs of GST can only be claimed if registered for GST. Most workers using ABNs earn less than \$75,000 thus need not be registered for GST.



Services funded under the *Disability Services Act 1986* are GST free. GST exempt activities in relation to service include: health, education, child-care, cars for people with a disability, religious services and non-commercial activities of charitable institutions.



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