



REVENUE RULING

PT6

January 2008

PAY-ROLL TAX GUIDELINES ON SUBCONTRACTING ARRANGEMENTS AND EMPLOYMENT AGENTS

INTRODUCTION

1. Legal precedents have established that the process of determining whether an employment relationship exists is one of gathering detailed information about the relationship, identifying the indicia that either support or do not support the existence of an employment relationship, evaluating those indicia in the context of the relationship, and then on balance, making a decision as to whether or not an employment relationship exists.
2. While the process is well settled, it is recognised that in some cases the application of the legal principles to a particular set of facts is most difficult. Accordingly, in these cases there is no easy answer for employers, their representatives, or taxation authorities, to the question “who is an employee?” and in those cases it may be necessary to seek legal advice.
3. The Commissioner of State Revenue would be acting contrary to legal principles if a process other than that established by case law were to be adopted in determining whether an employment relationship existed or not. As those legal principles require that all the circumstances of the parties’ relationship must be taken into account when determining whether or not an employment relationship exists, each case must be considered on its own facts. For this reason, the Commissioner of State Revenue can do no more than provide guidelines to assist employers and their representatives.
4. The purpose of this ruling is to provide some background information about employment relationships and to provide guidelines as to how the Commissioner of State Revenue will consider certain subcontracting arrangements for pay-roll tax purposes. These arrangements include:
 - 4.1 a contract between a principal and the individual who performs the services;
 - 4.2 a contract between a principal and a company, partnership or trust that is related to the individual who performs the services; and
 - 4.3 “employment agents” as defined in the Glossary of the Pay-roll Tax Assessment Act 2002 (“PTAA”).

Employer/Employee Relationships

5. The definition of ‘wages’ at Clause 2 of the Glossary, of the PTAA includes:
 - (1)(a) “wages, salary, commission, bonuses or allowances paid or payable to or in relation to an employee as an employee, whether paid or payable at piece work rates or otherwise, and whether paid or payable in cash or in kind;”

6. In accordance with the definition of 'wages', payments liable to pay-roll tax include payments made to an employee under an employer/employee relationship.
Any wages paid by someone acting for the employer, or acting in concert or under an arrangement or undertaking, whether formal or informal and whether express or implied, are taken to be an employer.
7. Where an employer/employee relationship does not exist between a principal and a worker, no pay-roll tax is payable.
8. The relationship between an employer and an employee is a contractual one and is referred to as a "contract of service". The Act does not include a definition of the terms "employee" or "contract of service" and therefore case law is relied on to provide working interpretations of those terms.
9. In contrast to an employer/employee relationship is the principal/independent contractor relationship, which is referred to as a "contract for services".
10. In general terms, an employee contracts to provide his/her labour in the service of the employer, while an independent contractor works in his/her own independent business and, in the course of his/her business, contracts to achieve a result for the principal.
11. In most cases, distinguishing between an employee and an independent contractor is relatively simple. However, over time a change in work practices has, in some cases, tended to blur the traditional distinctions between the two.
12. Over many years the courts have established tests to assist in determining when an employer/employee relationship exists and these will be outlined later in this document.

Worker Contracting Through a Company, Partnership or Trust

13. Section 21(1) of the PTAA provides that:
"If a person is a party to a tax-reducing arrangement, the Commissioner may –
 - (a) disregard the arrangement;
 - (b) determine that any party to the arrangement, is an employer for the purposes of this Act; and
 - (c) determine that any payment made under the arrangement is wages for the purposes of this Act."
 In the Glossary of the PTAA a 'tax-reducing arrangement' means "any arrangement, transaction or agreement, whether in writing or otherwise –
 - (a) under which a natural person [the worker] carries out, for or on behalf of a second person, services for which any payment is made to a third person related or connected to the worker; and
 - (b) which has the effect of reducing or avoiding the liability of any person to the assessment, imposition, or payment of pay-roll tax (whether or not that is the only effect of the agreement);"
14. The effect of this provision is that, notwithstanding that a person's services are provided through an arrangement with an entity such as a company, partnership or trust, the Commissioner can disregard that arrangement and determine the pay-roll tax liability of payments based on the relationship between the principal and the natural person who performs the services.

15. If it is determined that an employer/employee relationship exists, the payments will be deemed wages liable to pay-roll tax, regardless of the fact that they are paid to a company, partnership or trust.
16. Accordingly, where the Commissioner identifies any agreement or arrangement whereby:
 - 16.1 a natural person provides his or her services through a company, partnership or trust; and
 - 16.2 payment is made to the company, partnership or trust or some other entity related or connected to the natural person, in respect of the services provided by the natural person; and
 - 16.3 but for the interposed entity, an employer/employee relationship would exist between the natural person and the person to whom the services are provided;the Commissioner will deem the payments made by the person to whom the services are provided, to be wages liable to pay-roll tax

Employment Agents

17. Paragraph (h) of the definition of "Wages" in the Glossary, Clause 2, of the PTAA provides that wages include:

"an amount in respect of services that is paid or payable by an employment agent, directly or indirectly, to a person who was engaged to perform the services for a client of the employment agent, or to some other person, as a result of which engagement the employment agent receives payment, directly or indirectly, whether by way of a lump sum or an ongoing fee, in relation to the period during which the services are performed for the client by the person engaged to perform them;"
18. In the Glossary of the PTAA "employment agent" means a person [the agent] who procures the services of another person [the worker] for a third person [the client] under an arrangement where -
 - (a) the worker does not become the employee of either the agent or the client but does carry out duties of a similar nature to those of an employee; and
 - (b) remuneration is paid directly or indirectly by the agent to the worker or to some other person in respect of the services provided by the worker .
19. It is important to note that under the employment agency provisions an employer/employee determination is not required for a pay-roll tax liability to exist as the provisions contain their own specific tests for liability.
20. Paragraph (a) of the Glossary definition of "employment agent" includes the phrase 'carry out duties of a similar nature to those of an employee'. It is important to note that in the Commissioner's view the requirements of paragraph (a) are satisfied where a worker is procured by an employment agent to provide services for a client and, although the worker carries out duties of a similar nature to those of an employee, the relationship between the client and the worker is not an employer/employee relationship and the relationship between the agent and the worker is not an employer/employee relationship. In the Commissioner's view, there is no basis for interpreting the phrase as requiring that an employee of (i) the agent and/or (ii) the client, must be actually performing similar duties to those of the worker. This position is supported by the judgement in *Value Engineering (Australasia) Pty Ltd v Commissioner of State Taxation (WA) (1985)*.

21. The employment agency provisions primarily cover the situation where an employment agent provides the services of a worker to a client for a fee relating to the period of service of the worker. The amounts that the employment agent subsequently pays to the worker are liable to pay-roll tax.
22. However, the employment agency provisions are very broad and cover any type of arrangement through which a person **procures the services of a worker** or a number of workers for a client, and that person also pays the worker(s). An example of such an arrangement would be where a contract is awarded (eg. to provide ongoing maintenance of an asset) and the contract specifies the workers, the number of workers, or the number of workers in each specified class of workers, required to be provided under the contract. In these circumstances, it is possible for businesses not normally involved in the “contract labour” industry, and which do not consider themselves to be “employment agents”, to be liable to pay-roll tax on payments made to workers.
23. Where any arrangement which involves the procurement of the services of a worker for another person, and which meets the tests provided in the employment agency provisions, is identified by the Commissioner, the payments made to the worker pursuant to that arrangement will be assessed for pay-roll tax. Such arrangements include any contracts which may purport to serve some other purpose, but which specify the workers, the number of workers, or the number of each type of worker, required to be provided under the contract.

BACKGROUND TO EMPLOYER/EMPLOYEE RELATIONSHIP DETERMINATIONS

24. Over many years the courts have established a number of tests that can assist in determining when an employer/employee relationship exists. However, in the High Court judgement in *Stevens v Brodribb Sawmilling Co Pty Ltd (1986)*, it was made clear that there is no single test that can be relied on, and that it is the totality of the relationship which must be considered in reaching a determination.
25. Accordingly, although various tests identified by the courts can be used as a guide, to reach a determination it is necessary to consider all facets of the relationship between the parties, and each case must be considered on its own facts.
26. Some of the more significant factors that have traditionally been considered by the courts as key indicators of whether an employer/employee relationship exists are outlined below: -

Contract vs Practical Relationship

27. The terms of the contract provide evidence of the nature of the relationship between the parties. However, it is necessary to consider all of the facts and circumstances of the parties’ relationship, including their conduct towards each other at the time they entered into the contract and subsequently.
28. Little weight can be given to a particular term of the contract if it contradicts the effect of the agreement as a whole, or the practical relationship between the parties. Moreover, there is considerable authority for the proposition that the parties’ labelling of their relationship as one between independent contractor and principal will have no effect where that relationship, in practice, is really one of employment.
29. In particular, a clause in a contract that states that the relationship between the parties is that of “independent contractor and principal”, is not conclusive and must be considered in the context of all the other terms of that contract as well as the practical

relationship that exists between the parties.

30. Similarly, a clause in a contract that describes the contract as one to “produce a result”, is not conclusive and the contract will not be regarded as a contract between an independent contractor and principal unless supported by the facts.

Contracts to Achieve a “Given Result”

31. A contract to produce a “given result” is one in which the focus is on what ultimate result the contract requires, rather than what must be provided when performing the contracted task.
32. If the facts behind a contract support that its purpose is to achieve a “given result”, then it is an indicator that the relationship is one between principal and independent contractor.
33. This is particularly the case where the contract is for a fixed price, where payment is made subject to meeting various milestones specified in the contract, or at its completion.
34. If the contract is not to achieve a “given result” but is really for the labour of the worker, this is an indication that the relationship is one of employer/employee. An example of this type of arrangement would be where a worker provides “labour only” pursuant to a contract and is paid at an hourly rate, or set rate of pay, per pay period.

Control and Direction

35. It is accepted that an important test of whether an employer/employee relationship exists is that of ‘control’. The power or right to control or to direct (eg. through a supervisor) how, where, when and who is to perform the work in question, is a strong indication of an employer/employee relationship. For example, if the worker is required to work in conjunction with one or more others (eg. in a pair or as part of a team), or if his/her work is co-ordinated with the work undertaken by others, it is likely that it would be necessary for the employer to exercise, or have the right to exercise, some degree of control and direction over the worker. Similarly, if the worker works on a project that is subject to quality control measures, it is likely that the worker will also be subject to some degree of control and direction.
36. The absence of control may indicate that the relationship is not one of employer/employee, but this is not necessarily conclusive. In the High Court judgement in *Stevens v Brodribb Sawmilling Co Pty Ltd (1986)*, it was noted that control is not the sole determinant of the nature of the relationship. It is merely one of a number of indicia to be considered in making that determination and therefore it is the totality of the relationship between the parties which must be considered.
37. This “multi-factor” approach is illustrated in more recent judgements such as *Vabu Pty Ltd v Federal Commissioner of Taxation (1996)*. In the “Vabu” case it was held that while Vabu exercised a measure of control over its couriers, they were not employees because they supplied their own vehicles, were at risk of loss if they did not make enough deliveries and were paid to produce a result.
38. Clearly, in this case other factors have outweighed the importance of control.
39. Nevertheless, it is considered that in many instances the control test is still an important guide as to whether a person is contracting independently or working as an employee.

Independent Business

40. If a worker is engaged by a person in the ordinary course of operating their own independent business, then this is indicative of an independent contractor and principal relationship, particularly if the person works for a number of clients.
41. For example, if the worker was engaged as a result of advertising his or her services to the public as a normal part of carrying on a business, or as a result of winning a tender, then this will be indicative of an independent contractor and principal relationship.
42. Where the worker is exposed to making a loss as a result of the work undertaken, rather than the employer incurring all the risk, the worker is more likely to be considered as an independent contractor. A similar position holds if the worker has an opportunity to create his/her own goodwill. Moreover, the greater the expenditure incurred in earning the income and the greater the physical assets (materials, equipment) supplied by the worker, the more likely it is that the worker will be considered an independent contractor.
43. Note that if a person simply provides their labour to an employer (even if provided through a company, partnership or trust), it is unlikely that the person will be considered to be operating an independent business.

Power to Delegate

44. The power to delegate work (i.e. the power of the worker to engage another person to undertake the work) is indicative that the worker is an independent contractor.
45. However, in a principal and independent contractor relationship the power to delegate will generally be implicit, as the focus is on achieving a result rather than obtaining the services of a particular person.
46. Consequently, delegation clauses in contracts are considered in the context of the total arrangement between the parties to ensure that they are not simply a statement without foundation. Accordingly, a delegation clause in which a replacement worker must be approved by the principal, may not be regarded as establishing a power to delegate.

Integration

47. If the worker is an integral part of the principal's business, then this is indicative of an employment relationship. For example, if the services provided by the worker are of a type that are ordinarily required in the course of the principal's business, this is indicative of an employment relationship, particularly if the engagement is for a lengthy period. Similarly, if the worker is required to work in conjunction with employees or other workers engaged by the principal (e.g. in a pair or as part of a team), this would also be indicative of an employment relationship.

GUIDELINES ON EMPLOYER/EMPLOYEE DETERMINATION PROCESS

48. In reaching a determination as to whether an employer/employee relationship exists, the Commissioner of State Revenue would normally obtain documentation and seek responses to a number of questions which would draw out sufficient information on which to base a decision.

49. This approach, based on legal principles which require the totality of the relationship to be taken into account, requires that each case be considered on its own particular facts.
50. However, in order to provide employers and their advisors with some guidance in respect of the Commissioner's position on employer/employee relationships in general, a short list of factors has been developed from judicial precedents.
51. Where all those factors exist in a relationship between a worker and the person for whom the services are provided, it is likely that the Commissioner will accept that the relationship is one of independent contractor/principal.
52. The factors are as follows:
The worker:
 - 52.1 undertakes to produce a "given result" for a fixed fee rather than to simply do work i.e. the worker is paid for the result of the labour and not for the labour itself;
 - 52.2 provides the materials and/or equipment necessary to undertake the task. The equipment should be more than "incidental" to the person's services i.e. should be more than tools of trade;
 - 52.3 has an unfettered discretion to delegate the work;
 - 52.4 bears the risk of making a loss in running a business through incurring significant expenses related to the income earned; and
 - 52.5 provides services to the general public.
53. Where all the factors identified in paragraph 52 above are not present in an arrangement, it will be necessary for the Commissioner to examine the totality of the relationship, as explained in paragraphs 48 and 49 of this ruling, before making a determination as to the nature of the relationship.
54. Where all the factors identified in paragraph 52 are not present in an arrangement and that arrangement is simply "to do work" for an hourly, or other time based rate of pay, it is likely that the Commissioner will determine that the arrangement is one of employer/employee.
55. Should there be any doubt as to whether an arrangement would attract pay-roll tax, a written approach should be made to the Commissioner specifying the details and attaching the relevant documentation.
56. At Schedule 1 is a list of questions which when answered, will give an indication as to whether an employer/employee relationship is likely to exist. Note that these questions are provided only to give an indication as to whether an employment relationship exists.

SCHEDULE 1

The following is a list of questions which, when answered, will give an indication as to whether an employer/employee relationship exists.

If the answer to most of the questions is 'yes', it is a strong indication that the person providing the services is an employee and payments made to that person will be subject to pay-roll tax:

- ◆ Is the person providing the services paid on a time basis (e.g. hourly rate) rather than on a per job basis?
- ◆ Is the contract wholly or principally for labour?
- ◆ Does the person requiring the services have the authority to control or direct the manner in which the work is to be performed?
- ◆ Is the person providing the services prevented from delegating or subcontracting his/her work to another person without approval?
- ◆ Is the person providing the services engaged for a lengthy period or on a continuing basis?
- ◆ Are the services provided by the worker ordinarily required by the person requiring the services in the normal course of their business?
- ◆ Is the person providing the services performing work similar to work carried out by an employee in the organisation?
- ◆ Are the work hours defined?

IMPORTANT

Note that these questions are provided only to give an indication as to whether an employment relationship exists. Should an employer be uncertain as to whether an employment relationship exists, professional advice should be sought or the Office of State Revenue contacted.

Telephone: (08) 9262 1300

Facsimile: (08) 9226 0841

Email: payroll@finance.wa.gov.au

Website: www.finance.wa.gov.au

Ausdoc: DX 227 PERTH

ADDENDUM TO REVENUE RULING PT6

Guidelines on subcontracting arrangements

Date: January 2008

Introduction

1. Following consultation with industry bodies, professional advisers and employers, it has become apparent that some business operators may not be correctly applying the guidelines in Revenue Ruling PT6 when considering whether the workers they have engaged are independent contractors or employees and, in turn, when deciding whether payments made to, or in relation to, such workers are liable for pay-roll tax.
2. This addendum provides additional guidance on the characteristics of (a) employer/employee relationships and (b) principal/independent contractor relationships and should be read in conjunction with Revenue Ruling PT6.

The status of all workers engaged as "contractors" should be considered

3. Many different types of workers are engaged by business operators as "contractors" including tradespersons (such as welders, boilermakers, fitters), trades assistants, draftsmen, architects, riggers, site supervisors, various types of installers and executive/managerial staff.
4. Whenever one or more workers are engaged as "contractors" the business operator should be aware that there is a possible liability for pay-roll tax on the payments made to the workers particularly where:
 - the worker is not engaged to produce a given result for a fixed fee and accordingly is paid an hourly/daily rate or a piece work rate;
 - the worker performs services required by the business operator either at the business operator's place of business or at a site specified by the business operator;
 - payment is wholly or principally for the labour of the worker; or
 - the worker is not conducting a business that is independent from the business operator's business.

Note: For the purpose of determining pay-roll tax liability, the fact that the worker is paid or engaged through their interposed entity or business such as a company, partnership or trust is irrelevant (see paragraphs 13-16 of Revenue Ruling PT6).

5. Where after examining all aspects of the relationship between the business operator and the worker the combined elements at paragraph 5 are considered to be satisfied, that is, the worker is engaged directly or indirectly

on an hourly or piecework rate, the payment is wholly or principally for the labour of the worker and the worker performs the required services at the business operator's place of business (or a place specified by the business operator), the Office of State Revenue would generally be of the view that an employer/employee relationship was in existence and that payments to the worker should be included in the business operator's pay-roll tax returns.

All features of the relationship must be considered

6. From experience, some of the more common reasons given by business operators as to why they considered workers to be independent contractors include:
 - The worker has an Australian Business Number (ABN);
 - There is a written contract with the worker;
 - The worker operates through a company, partnership or trust;
 - The Australian Taxation Office has indicated that the worker is an independent contractor;
 - The worker works for or has worked for other businesses;
 - The worker is not entitled to superannuation or leave entitlements;
 - The worker provides their own tools;
 - The worker provides their own vehicle;
 - Other workers of the same type are regarded as independent contractors;
 - The worker was engaged for a particular project and was not engaged on a permanent basis.

7. However none of these reasons on their own would provide sufficient grounds to conclude that the worker is an independent contractor and, on this basis, to omit the payments made to such worker from pay-roll tax calculations. To determine whether payments made to a worker should be included for pay-roll tax purposes it is necessary to examine the complete working relationship between the business operator and the worker and the decision to include or omit a worker cannot be made on the basis of only a few features of the relationship. As explained in Revenue Ruling PT6, in each case it is necessary to consider the totality of the relationship between the business operator and the worker and this involves considering a very wide range of factors.

8. Some of these factors may suggest that the relationship is one of employer/employee while other factors may suggest that the worker is an independent contractor. If the position is not clear cut (as will often be the case) it is recommended that professional advice be sought as the issue to be considered is a complex legal issue. Alternatively, it is recommended that the Office of State Revenue be contacted for further information.
9. The complexity of the legal issues is demonstrated by the decisions in *Vabu Pty Ltd v. Federal Commissioner of Taxation* (1996) (referred to in paragraph 37 of Revenue Ruling PT6) and *Hollis v. Vabu Pty Ltd trading as Crisis Couriers* (referred to in paragraph 28 below).
10. Before consideration can be given to the legal issues, it is necessary to ascertain the factual circumstances of the business operator's relationship with each worker. In every case this is a detailed process and it can take some time to obtain a complete and accurate picture of the relationship. A decision as to whether a worker is an employee or an independent contractor should not be made on the basis of a superficial examination of the relationship.

Given result

11. If a worker is engaged to produce a given result, then this may be indicative of a principal/independent contractor relationship (see paragraphs 31-34 of Revenue Ruling PT6).
12. For a contract to be a contract to produce a given result, generally both the required outcome and the contract price would be known at the start of the contract.
13. Where a worker is engaged to perform services (for example, engineering services) on a project and is paid an hourly/daily rate, this would not be considered to be a contract to produce a given result for a fixed fee even if the number of hours required to be worked on the project could be reasonably estimated at the commencement of the engagement.

Examples

A construction company enters into a contract for the construction of a building for an agreed fee of \$3 million. The company has entered into a contract to produce a given result for a fixed fee.

For the purpose of carrying out the work required by the contract, the company engages various construction workers to perform tasks required for the construction of the building and the company pays the workers an hourly rate. The construction workers are not entering into a contract to produce a given result but rather are entering into a contract to provide services for an hourly fee.

The construction company engages a landscaper to carry out the landscaping required for the building for a fixed fee of \$10,000. The landscaper has entered into a contract to produce a given result for a fixed fee.

* * * * *

The owner of an orchard engages a number of orchard hands to prune trees. The orchard hands are paid per number of trees pruned and are free to work whatever days/hours they wish. The orchard hands are not entering into a contract to produce a given result but rather are entering into a contract to provide services on piecework rates.

Labour

14. Where a worker is paid wholly or principally for their labour and is not engaged to achieve a given result, this is an indication that the relationship is one of employer/employee (see paragraph 34 of Revenue Ruling PT6).
15. In this context labour is not restricted simply to *physical* exertion. Where a worker is engaged to provide services of a non-physical nature (for example, drafting services) because of their skills, knowledge, experience or abilities and does not bring anything of a tangible nature to the job, it will almost certainly be considered that the contract under which the worker is engaged is a contract wholly or principally for labour.

Examples

A business engages a computer programmer to develop a computing system pursuant to a contract and the business provides all of the computer equipment required. The programmer is essentially providing labour only.

* * * * *

An electrical contracting company engages an electrician to install security alarm systems for its clients. The company provides all of the materials required for each job. The electrician collects the materials, takes them to the client's premises and installs them. Although required to use their own tools of trade, the electrician is essentially providing labour only.

Control

16. The right to control or direct a worker in the manner they perform their work is a strong indication of an employer/employee relationship (see paragraphs 35-39 of Revenue Ruling PT6).
17. With some businesses, the business operator does not actually exercise much (if any) control, direction or supervision over a worker in practice. For instance, a business operator who operates a plumbing business and who is himself a plumber engages a worker who is an experienced plumber. The

business operator is confident that, as the worker is a skilled and experienced plumber, there is no need to supervise him or to give him instructions or directions on how to do the work.

18. However in this context the issue to be considered is whether the business operator has the *right or authority* to exercise control or direction over the worker - not whether such control is actually exercised.
19. In considering whether the business operator has the right or authority to exercise control over how the worker performs the work it is important to recognise that in certain circumstances there may be very *limited scope* to exercise control. For instance, where a worker is engaged in a professional or managerial capacity or is a highly skilled tradesperson, and the business operator does not have those qualifications or experience, the business operator will have little scope to exercise control over how the worker routinely goes about their tasks.

Although in cases such as this there may be little scope for the business operator to control or direct the worker in relation to carrying out his tasks, there may be scope to exercise control in relation to *incidental or collateral* matters and this will be sufficient to satisfy the element of control.

Examples

A project management firm engages a worker as a site supervisor. The site supervisor is responsible for overseeing all things that happen on site. In this example the site supervisor could be either a professional or a highly skilled or experienced tradesperson. The general manager of the firm may not have the technical skills and experience to be able to tell the site supervisor how to actually go about performing the work. However, the project management firm may be able to control or direct the site supervisor in relation to incidental or collateral matters such as the hours of his attendance at the work site, the records he must maintain and the format of his reports on progress.

* * * * *

The owner of a fishing boat may engage a worker to captain the boat. The owner remains on shore, the captain has the day to day control over the boat and the crew whilst at sea and there is very little scope of the boat owner to control how the captain carries out his work whilst the boat is at sea. However, there may be scope for the boat owner to give the captain directions on incidental or collateral matters such as safety procedures on the boat, how the catch is to be processed and stored whilst at sea and what areas are to be fished.

* * * * *

In both of these examples the fact that the business operator has the right to exercise control in relation to incidental and collateral matters satisfies the element of control.

20. When considering whether a business operator has the right or authority to exercise control or direction over a worker it is important to consider this issue in the context of the entire period that the worker has worked for the business operator and not simply concentrate on the recent history. For example, the worker may perform the tasks in accordance with the instructions he was given when he first commenced working for the business operator. Similarly, the worker may carry out the tasks in accordance with manuals or other written instructions provided by the business operator.

Power to delegate

21. Revenue Ruling PT6 explains that the power to delegate work may be indicative of a principal/independent contractor relationship (see paragraphs 44-46).
22. Where a business operator claims that the workers engaged have the power to delegate their work, the Commissioner will usually look behind such a claim in order to ascertain whether there is evidence that the delegation power is actually exercisable in practical terms.
23. For example, if the worker has actually engaged other persons to assist in the completion of the work, and pays remuneration to those workers, it will generally be accepted that the worker has the power to delegate. However if the worker performs all of the work and in practice does not engage others to assist with the performance of the work, a claim that the worker has the power to delegate may require closer scrutiny.

Examples

A worker is engaged on a contract by a steel fabrication firm and is paid an hourly rate. It is claimed that under the terms of the contract the worker has the power to delegate. If on the occasions when the worker has been unable to attend work (for example, due to illness), the worker has provided a replacement worker and paid that worker, then this would support the claim that the worker has the power to delegate. However, if on such occasions the steel fabrication firm has allocated the worker's work to someone else, then this would indicate that there is no power to delegate.

Integration

24. If a worker is providing services that are of the type that are ordinarily required in the course of the business operator's business then this may be indicative of an employer/employee relationship (see paragraph 47 of Revenue Ruling PT6).
25. It is therefore relevant to consider whether there are employees performing the same type of work as the worker. Similarly it may be relevant that the worker was formerly an employee (and is still doing the same work).

Example

A firm sells air conditioning units. The firm has a number of salaried employees who are sales people and also has several commission based sales people. The commission based sales people do work that is almost identical to the work of the employed sales people. As the business of the firm is the selling of air conditioners, the commission based sales staff are considered integral to the business.

Independent business

26. If a business operator engages a worker who conducts their own independent business, then this is indicative of a principal/independent contractor relationship rather than an employer/employee relationship (see paragraphs 40-43 of Revenue Ruling PT6). The issue to be considered here is whether the worker is conducting a business on their own account as distinct from participating in the business of the business operator.

27. In *Hollis v. Vabu Pty Ltd trading as Crisis Couriers* (2001) the High Court examined the relationship between a courier company and its bicycle couriers. In concluding that the bicycle couriers were employees and not independent contractors, the Court examined whether the bicycle couriers were running their own independent businesses:

"Viewed as a practical matter, the bicycle couriers were not running their own business or enterprise, nor did they have independence in the conduct of their operations. ...

... A bicycle courier is unable to make an independent career as a free-lancer or to generate any "goodwill" as a bicycle courier. The notion that the couriers somehow were running their own enterprise is intuitively unsound, and denied by the facts disclosed in the record".

28. Some of the features usually regarded as indicating that the worker is operating their own independent business are:

- they have their own business premises;
- the business is able to generate goodwill of its own;
- they incur business expenses on a job;
- they have staff that are engaged in the principal work of the business;
- they work for a number of clients;

- they own and maintain significant capital equipment and assets (not just hand tools);
- they bear the commercial risk of making a profit or loss on a job;
- they advertise to the general public;
- they bear the liability and responsibility for any poor workmanship or injury.

Examples

A transport company operates a fleet of trucks in the transport industry. Due to staff shortages they require assistance to meet their delivery demands and they supplement their staff with additional workers. If they engage a driver who is paid an hourly rate to drive the transport company's truck on a full time basis it is unlikely that the driver would be regarded as operating his own independent businesses. Alternatively, if they engage a driver who supplies and maintains his own truck and who works for others as well as the transport company, it is likely that this driver would be regarded as operating his own independent business.

* * * * *

A number of fruit pickers are engaged by an orchard owner to pick fruit. They are free to work what ever days/hours they wish and are paid per bin of picked fruit. The fruit pickers would not be regarded as operating their own independent businesses.

29. In project based industries, a business operator may only need a small core of permanent employees and when undertaking a large project, may engage additional workers as needed for the duration of the project on the basis that the services of those workers will be terminated at the completion of the project. In such circumstances, the mere fact that a worker is only engaged for a few months (or even weeks) will not be conclusive as to whether the worker is operating an independent business or not - even though the worker may work for a number of business operators over the course of the year (or even work for more than one business operator at the same time).

Summary

30. In determining if payments made to a worker should be included for pay-roll tax purposes, the entire working relationship between the business operator and the worker should be considered in detail and no worker should be included or omitted on the basis of only a few factors or on the basis of a superficial examination of the relationship.

IMPORTANT

This addendum is provided to assist in determining if payments to workers are liable for pay-roll tax. Should a business operator be uncertain as to their liability for pay-roll tax, professional advice should be sought or the Office of State Revenue contacted for further information.

Telephone: (08) 9262 1300
Email: payroll@finance.wa.gov.au

Facsimile: (08) 9226 0841
Website: www.finance.wa.gov.au